

ESTABLISHING A MINIMUM SALARY IN THE EU MEMBER STATES

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Abstract: *The European Commission has initiated the first steps towards a common framework for setting minimum wages in EU Member States, but will not determine the level of wages, but nevertheless wants to impose an agreement on a set of criteria that must be met when governments set minimum wages. Any legislative proposal will take into account that the minimum wages must be established according to the national specifications, by collective labour contracts or legal provisions.*

Keywords: *minimum wage; social protection; collective bargaining;*

Europe must maintain social protection systems, which are among the most advanced in the world, given that the number of people employed in the EU is at a record level, and many working people continue to face the difficulty of meeting the costs. daily. That is why President von der Leyen has expressed his wish that every worker in our Union should have a fair minimum wage that would allow him a decent living, no matter where he works.

Establishing a minimum wage, in accordance with the objectives of the International Labour Organization Convention no. 131/1970 regarding the fixing of minimum wages¹, it is justified by the need to provide a vital minimum, to protect the purchasing power and to control the effects of the minimum wage on the wage scale. It is determined on the basis of the standard budget, as well as on the evolution of the cost of living².

According to this convention, reference is made to minimum wages, art. 2 paragraph (1) of the Convention, where it is stipulated that the minimum wages will have the power of law and cannot be lowered; non-compliance will result in the application of appropriate sanctions, criminal or otherwise, to the person or persons responsible.

It should be noted that in par. 2 of the same article stipulates that the freedom of collective bargaining must be fully respected, and the role of collective bargaining in establishing minimum wages is affirmed.

In art. 3 the following are established: the elements that are taken into account in determining the level of minimum wages will include, as far as possible and

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¹ Ratified by Romania by the Decree of the State Council no. 83/1975, published in the Official Bulletin no. 86 of August 2, 1975.

² N. Voiculescu, *Labour law. Internal and Community regulations*, Wolters Kluwer publishing house, Bucharest, 2007., p. 133.

taking into account the national practice and conditions, the following: a) the needs of the workers and their family as compared to the general level of wages in the country, the cost of living, social security benefits and living standards of other social groups; b) economic factors, including the requirements of economic development, productivity and the interest that exists to achieve and maintain a high level of labour force utilization³.

The European Commission has initiated the first steps towards a common framework for setting minimum wages in EU Member States and will put forward a concrete proposal in this regard, the aim being to stop the labour force exodus from east to west, in search of higher wages. .

Payroll is one of the aspects that the European Union, not being competent, does not pronounce, along with strike, lock-out and unions, according to its constituent acts. With these wheels incidentally, respectively in case of discriminatory measures, C.J.U.E. has been pronounced in recent years on a number of pay issues, such as the Laval Case⁴. Therefore, the incompetence of the U.E. in this matter it refers to the regulation of wages as such, as a legal institution, and not to the judging at the level of the U.E. of causes related to payroll.

Of the 28 Member States, only Denmark, Italy, Cyprus, Austria, Finland and Sweden do not have a legal minimum wage. The current minimum wage in Bulgaria for a full-time worker is 312 euros per month, compared with 2,142 euros per month in Luxembourg.

Thus, the highest level of the minimum wage in the EU is found in: United Kingdom (1,760 euros), Ireland (1,707 euros), Holland (1,654 euros), Belgium (1,594 euros), Germany (1,584 euros), France (1,539 euros), The first place was Luxembourg with 2,142 euros per month, not only as the highest minimum wage in the EU, but also in the world.

There are 5 EU states which provide minimum wages of between 700 and 1000 euros. These are Greece - 758 euros, Portugal 741 euros, Malta - 762 euros, Slovenia - 887 euros and Spain - 950 euros.

The lowest level of minimum wage is found in Bulgaria with 312 euros, Romania - 446 euros, Hungary - 487 euros, Croatia - 506 euros, Czech Republic - 519 euros, Slovakia - 520 euros, Poland - 523 euro.

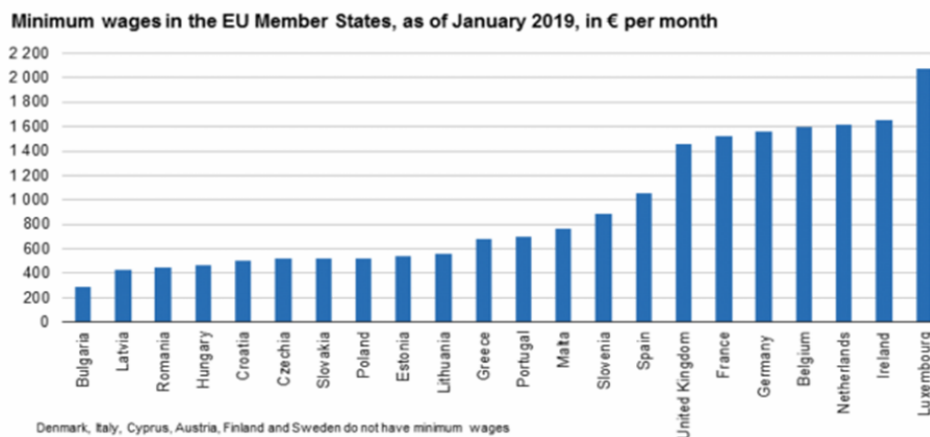
The Baltic nations are not far from them: 607 euros in Lithuania, 430 in Latvia and 584 in Estonia.

Candidate countries to join the continental club such as Albania, Montenegro, Macedonia and Serbia do not reach 300 euros per month.

The minimum wage in the European states is between 300 and 2,100 euros, Romania occupying some of the last places.

³ Radu-Ștefan Pătru, *Conceptual changes in establishing the minimum gross basic wage in the country guaranteed in payment*, Law no. 5/2019, p. 50

⁴ Decision of 18.12.2007, Case C-341/05.12.2007, Cauza C-341/05



Source: EUROSTAT

Given that the graph below shows the gross wages of each Member State, and Romania has the highest labor taxes in the Union, of 41%, while the Bulgarians pay only 22%, we can say that the wage differences between Romanians and Bulgarians are very small. Thus, from the gross salary of 446 euros, Romanians remain with only 275 euros in hand, while the Bulgarians have 243 euros, out of the 312 euros gross.

Wage gaps among Member States are smaller if price differences are eliminated.

The European Commission will not determine the level of the salary, but wants to impose an agreement on a set of criteria that must be met when governments set minimum wages. The purpose of the commission is to establish a minimum wage equivalent to 60% of the average wage in a country, which would lead to an increase in the minimum wage in countries where there is a large gap between minimum wages and the average level of wages at the level of the country.

There will be opposite trends. Thus, countries such as Denmark and Sweden cannot accept the idea of having a minimum wage at EU level. because the measure could lead to lower wages. Employees in the Nordic countries benefit from relatively high average salaries, given that employers in Denmark pay 43.50 euros per hour per worker in 2018, thus being in the top of paid hours at European level.

At the opposite pole you can find the member states of Eastern Europe, where the lowest level of minimum wage is recorded.

From the point of view of the legal instrument for the regulation of the minimum wage in the EU⁵, the rule is that they are established by law. As an

⁵ <https://www.ilo.org/dyn/natlex/natlex4.home> și <https://wageindicator.org/salary/minimum-wage>, accessed on January 10, 2019.

exception, there are states such as Denmark, Sweden, Norway or Italy, where the minimum wage is regulated by collective bargaining.

From the point of view of the criteria for differentiation of minimum wages are used: the age of the workers (Greece, Great Britain, Holland, Belgium), the specific of the working regime (for example, in Spain for the domestic workers), the occupations (Austria), the working groups and the characteristics and difficulty of the service tasks (Greece, Czech Republic, where different minimum wages are set for 8 work groups, Slovakia), the geographical area (Portugal, which sets a minimum wage for Madeira and the Islands in addition to the national minimum wage Azores), or in China (where the minimum wage is set by each region separately), or in Japan (where regional minimum wages are set, but also for each industry branch). In Russia, the criterion is also geographical, at federal level the salary is set by the government, but at regional level they are established by tripartite agreements concluded by representatives of local communities, unions and employers. in the USA. a minimum wage is established at the federal level, and at the regional level, each state has the freedom to set another level of the minimum wage, having as a reference the federal salary⁶.

In Bulgaria, Croatia and Ukraine, similar to the situation in Romania prior to the entry into force of Government Emergency Ordinance no. 96/2018⁷, a single minimum wage at national level is established by law. In France, as a rule, a single gross minimum wage is guaranteed by law in the country for payment for all categories of employees, but for certain categories of employees, for example minors, derogating provisions (workers under 17 years of age) are established who are less than six months old at work are entitled to 80% of the minimum wage in the economy, and workers between 17 and 18 years can receive a salary of 90% of the minimum wage in the economy)⁸.

On January 1, 2020, over two thirds of the EU member states had a minimum wage in the economy. The only Member States that do not yet have a minimum wage in the economy are: Denmark, Italy, Cyprus, Austria, Finland and Sweden⁹.

In Romania, the state intervention in regulating the minimum gross basic wage per country guaranteed in payment is justified by the prism of the constitutional provisions. Thus, art. 41 paragraph 2 of the Romanian Constitution establishes that the employees have the right to social protection measures, among these measures being the establishment of a gross minimum wage in the country. The above provisions must also be corroborated with the provisions of art. 1 paragraph 3 of the Constitution, which establishes the social character of the Romanian state, this

⁶ Radu-Ştefan Pătru, *art. cit.*, p. 51

⁷ Published in the Official Gazette of Romania, Part I, no. 963 of November 14, 2018

⁸ Radu-Ştefan Pătru, *art. cit.*, p. 51

⁹ avocatnet.ro

character justifying the creation by the state of social protection measures, including the establishment of a gross minimum wage in the country¹⁰.

The government is competent¹¹ that after consulting the unions and the employers to establish the minimum gross basic wage in the country guaranteed in payment

Gross minimum basic wage in the country guaranteed in payment¹², corresponding to the normal work program, it is established, specifies the art. 164 para. 1 of the Labour Code, by Government decision, after consulting trade unions and employers¹³.

As appreciated in the literature, the legislature does not establish the differentiation of the gross minimum wage in the country with a general title, for all categories of employees. The legal mechanism is the following: the legislator first establishes a rule for the minimum gross wage in the country guaranteed in payment, from which, at the same time, it regulates a series of exceptions: either according to the level of studies, corroborated with the seniority in work, or in relation to the necessity. stimulating the supply of labour force for a certain sector that is deficient from this point of view, namely that of constructions¹⁴.

In the private sector, starting from these minimum levels, legally binding, higher salaries can be established through collective and / or individual negotiation. One such recent example is the signing of the collective labour contract in the financial-banking sector, in which the social partners have established a minimum wage in banks of 2,500 lei gross¹⁵. The same solution is not possible in the budgetary sector, where the minimum wages are at the level expressly established by the normative acts.

The evolution of the minimum wage¹⁶ In Romania, for the last five years, this is the case¹⁷:

According to the Government Decision no. 1091/2014 for establishing the minimum gross basic wage in the country guaranteed in payment¹⁸ starting with January 1, 2015, the minimum gross basic wage in the country guaranteed in

¹⁰ Al. Athanasiu, A. M. Vlăsceanu, *Labour law. Course notes*, C.H. Publishing House Beck, Bucharest, 2017, p. 177 et seq.; R.S. Father, *Individual labour law*, University Publishing House, Bucharest, 2018, p. 228-229.

¹¹ I. T. Ștefănescu, *Theoretical and practical treatise on labour law*, the legal universe publishing house, Bucharest, 2017, p. 686

¹² Alexandru Țiclea, *Labour law treaty, 9th edition*, Juridical Universe Publishing House, Bucharest, 2015, p. 514

¹³ Dan Țop, *Treated by labour law*, Mustang Publishing House, Bucharest, 2018, p. 472

¹⁴ Radu-Ștefan Pătru, *art. cit.*, p. 49

¹⁵ http://www.economica.net/s-a-semnat-primul-contract-colectiv-de-munca-intre-sindicat-si-bancheri-salariul-minim-in-banci-va-fi-de-2-500-de-lei-in-urmatorii-doi-ani_162457.html, accesat la data de 15 ianuarie 2019.

¹⁶ I. Sorică, *Gross minimum basic wage in the country guaranteed in payment*, in I. T. Ștefănescu (coordinator), "Dictionary of labor law", Juridical Universe Publishing House, Bucharest, 2014, pp. 212-213

¹⁷ Dan Țop, *op. cit.*, p.473-474

¹⁸ Published in the Official Gazette of Romania, Part I, no. 902 of December 11, 2014.

payment was set at 975 lei per month, for a complete work program of 168,667 hours on average per month in 2015, representing 5,781 lei / hour, and as of July 1, 2015, the minimum gross basic wage in the country guaranteed in payment was set at 1,050 lei per month, for a complete work program of 168,667 hours on average per month in 2015, representing 6,225 lei / hour.

By the Government Decision no. 1017/2015¹⁹, starting with May 1, 2016, the minimum gross basic wage in the country guaranteed for payment was set at 1,250 lei per month, for a complete work program of 169,333 hours on average per month in 2016, representing 7,382 lei / hour. Starting with February 1, 2017 the minimum gross basic wage in the country guaranteed in payment, amount established in money that does not include bonuses and other additions, is set at 1,450 lei monthly²⁰, for a complete work schedule of 166.00 hours, on average, per month, in 2017, representing 8,735 lei / hour. Government Decision no. 846/2017 for establishing the minimum gross wage in the country guaranteed in payment²¹ established that, starting with January 1, 2018, the minimum gross basic wage in the country guaranteed in payment, amount established in money that does not include bonuses and other additions, is set at 1,900 lei per month, for a complete work program of 166.666 hours, on average, per month, in 2018, representing 11.40 lei / hour ”.

Government Decision no. 937/2018 for establishing the minimum gross basic wage in the country guaranteed in payment²² provided in art. 1 that starting with January 1, 2019, the minimum gross basic wage in the country guaranteed in payment, is established in money, without including bonuses and other additions, to the amount of 2,080 lei per month, for a normal working program on average of 167,333 hours per month, representing 12.43 lei / hour.

By exception from the provisions of art. 1 paragraph 1, starting with January 1, 2019, for the personnel classified by positions for which the level of higher education is provided, with a working age of at least one year in the field of higher education, the minimum gross basic wage in the country guaranteed in payment, without to include bonuses and other additions, it is increased from 2,080 lei to 2,350 lei per month, for a normal work schedule of 167,333 hours on average per month, representing 14,044 lei / hour.

By way of derogation from the provisions of art. 164 para.1²³, between January 1, 2019 - December 31, 2019, for the field of constructions, the minimum gross basic wage in the country guaranteed in payment is established in money, not including bonuses and other additions, at the amount of 3,000 lei per month, for a

¹⁹ Published in the Official Gazette of Romania, Part I, no. 987 of December 31, 2015

²⁰ Decision no. 1/2017 for establishing the minimum gross basic wage per country guaranteed in payment, published in the Official Gazette of Romania, Part I, no. 15 of January 6, 2017

²¹ Published in the Official Gazette of Romania, Part I, no. 950 of November 29, 2017

²² Published in the Official Gazette of Romania, Part Im no. 1045 of December 19, 2018

²³ Art. 71 par. 1, of GEO no. 114/2018

normal work program. an average of 167,333 hours per month, representing 17,928 lei / hour.

Government Decision no. 935/2019 for establishing the minimum gross basic wage in the country guaranteed in payment²⁴ ordered by art.1 para. 1 that starting with January 1, 2020, the minimum gross basic wage in the country guaranteed in payment, is established in money, without including bonuses and other additions, to the amount of 2,230 lei per month, and by par. 2 that for the personnel classified by positions for which the level of higher education is provided, with a working age of at least one year in the field of higher education, the minimum gross basic wage in the country guaranteed in payment is established at the amount of 2,350 lei per month.

The employer cannot negotiate and establish, expressly provided by art. 164 para. 2, the basic salaries through the individual employment contract below the minimum hourly gross basic wage in the country.

It was mentioned that “the Romanian state that ratified the O.I.M. no. 131/1970 regarding the fixing of minimum wages, being forced to implement it, used differentiated solutions over time: Initially, for a long term, establishing a single gross wage in the country guaranteed in payment and, from January 1, 2019, regulating some exceptions on categories of personnel or areas of activity. The existence over time of these types of solutions is possible, because the O.I.M. no. 131/1970 regarding the fixing of minimum wages, especially with regard to developing countries, contains a generic billing regulation, which means that both legislative solutions that have been practiced in Romania are possible”²⁵.

The minimum gross basic wage in the country guaranteed in the payment is made known to the employees through the employer's care.

Failure to comply with the provisions regarding the guarantee of payment of the minimum gross wage in the country, constitutes a contravention and is sanctioned, according to art. 260 para. 1 of the Labor Code with a fine.

All workers must have a fair wage to ensure a decent standard of living, yet many people working in the EU are still at risk of slipping into poverty. To alleviate this situation, we must “reach a common point of view that promotes high standards of wage setting, while stimulating the gradual economic and social convergence in the EU, promoting collective bargaining systems and respecting the autonomy of the social partners. Any legislative proposal will take into account that the minimum wages must be established according to the national specifications, by collective labor contracts or legal provisions”²⁶.

²⁴ Published in the Official Gazette of Romania, Part I no. 1010 of December 13, 2019

²⁵ Radu-Ștefan Pătru, *Conceptual changes in establishing the minimum gross basic wage in the country guaranteed in payment*, art. cit. ,p. 50

²⁶ European Commissioner Nicolas Schmit: *All workers must have a fair wage to ensure a decent standard of living*, 16 jan.2022, www.hotnews.ro