



International
Labour
Office
Geneva

Institutional underpinnings of the minimum wage fixing machinery: The role of social dialogue

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September 2018

Governance
and Tripartism
Department

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First published (2018)

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Title: Institutional Underpinnings of the Minimum Wage Fixing Machinery: The Role of Social Dialogue

Language: English edition

ISBN: 978-92-2-031340-4 (print)

978-92-2-031341-1 (web pdf)

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Printed in (Switzerland)

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Acknowledgements

The authors would like to thank Véronique Basso of the International Labour Standards Department (NORMES), Patrick Belser of the Inclusive Labour Markets, Labour Relations and Working Conditions Branch (INWORK) and Youcef Ghellab of the Social Dialogue and Tripartism Unit (DIALOGUE) for their intellectual input and suggestions on this working paper.

1. Introduction

In the 2014 General Survey of the reports on the Minimum Wage Fixing Convention, 1970 (No. 131), and the Minimum Wage Fixing Recommendation, 1970 (No. 135), the Committee of Experts on the Application of Conventions and Recommendations (CEACR) defined a minimum wage as: “*the minimum sum payable to a worker for work performed or services rendered, within a given period, whether calculated on the basis of time or output, which may not be reduced either by individual or collective agreement, which is guaranteed by law and which may be fixed in such a way as to cover the minimum needs of the worker and his or her family, in the light of national economic and social conditions*” (ILO, 2014, p. 19).

Following a period in which its usefulness was disputed, since the 1990s a minimum wage has again been established or strengthened in many countries (ILO, 2016a). Reasons for this change include increasing wage inequality in many countries, and the prevalence of low pay in spite of positive economic growth in some emerging economies, as referred to in the ILO Global Wage Report 2016/17 (ILO, 2017a). Additional reasons include: increased labour and capital movements associated with social dumping; the spread of new types of employment contracts; and developments in industrial relations, such as the reduction of collective bargaining coverage (Vaughan-Whitehead, 2010; OECD, 2015). There is mounting evidence that minimum wages set at an adequate level have no negative effects on employment. If there are any effects at all, they are generally small and may be either positive or negative, as mentioned by Belman and Wolfson (2014). Hence, if it is well managed, a minimum wage is a useful tool in the fight against poverty and inequality (ILO, 2017a, pp. 24-29).

At the global level, a notable testimony to the increased salience of minimum wages is the recent ratification by a number of States of Convention No. 131. This Convention states that all States ratifying it shall establish a system of minimum wages. The most recent countries to ratify the Convention include Albania, Antigua and Barbuda, Armenia, Central African Republic, Kyrgyzstan, Montenegro, Republic of Korea, Republic of Moldova, Serbia and Ukraine. Malaysia and Morocco ratified the Convention in 2013 and 2016, respectively, while Bulgaria ratified the Convention in March 2018. As the 103rd Session of the International Labour Conference noted, activities with regard to a minimum wage have seen positive developments in all areas (ILO, 2014, pp. 11-12).

How should minimum wages be set? Since minimum wage determinations and adjustments are inextricably linked to countries’ national traditions and history, there are no one-size-fits-all solutions as noted at the aforementioned 2014 Conference and in the ILO Minimum Wage Policy Guide (ILO, 2014; ILO, 2016a). In paragraph 6 of the Minimum Wage Fixing Recommendation, 1970 (No. 135) this variation in possible solutions is noted. The minimum wage fixing machinery may take several forms, including: setting minimum wages by statute; decisions of the competent authority, with or without formal provision for taking account of recommendations from other bodies; decisions of wages boards or councils; industrial or labour courts or tribunals; as well as giving the force of law to provisions of collective agreements. In all cases, however, comprehensive consultations should be held with the social partners and, where appropriate, they should participate directly in the process, on an equal basis.

In most countries, when the competent authorities are setting a minimum wage or making decisions related thereto, a specialized or general institution is established and is consulted. However, some of these institutions are more effective than others and this affects the social acceptability of the process of fixing wages, i.e., input legitimacy, and the likelihood of achieving results that are in line with local economic circumstances, i.e., output legitimacy. In light of these factors, this working paper discusses the strengths and weaknesses of several institutional designs for wage fixing machineries and presents concrete strategies for their improvement.

2. Convention No. 131 and the General Survey

The Minimum Wage Fixing Convention, 1970 (No. 131), article 4, states the following:

1. Each Member which ratifies this Convention shall create and/or maintain machinery adapted to national conditions and requirements whereby minimum wages for groups of wage earners covered in pursuance of Article 1 thereof can be fixed and adjusted from time to time.
2. Provision shall be made, in connection with the establishment, operation and modification of such machinery, for full consultation with representative organizations of employers and workers concerned or, where no such organizations exist, representatives of employers and workers concerned.
3. Wherever it is appropriate to the nature of the minimum wage fixing machinery, provision shall also be made for the direct participation in its operation of:
 - (a) representatives of organizations of employers and workers concerned or, where no such organizations exist, representatives of employers and workers concerned, on a basis of equality;
 - (b) persons having recognized competence for representing the general interests of the country and appointed after full consultation with representative organizations of employers and workers concerned, where such organizations exist and such consultation is in accordance with national law or practice.

Comprehensive consultations and, when possible, the direct participation on a basis of equality of the social partners in all aspects of fixing a minimum wage, lie at the core of the Convention. This includes the appointment of individuals with proven competences in relevant areas. There are reasons for such a course of action. The participation of the social partners enhances the social acceptability of the minimum wage fixing process. If they are fully involved, the social partners may shield Governments from political pressures, i.e. regulatory capture, which may result in setting the minimum wage either too low or too high. The social partners are best informed regarding the needs of workers and the capacity of companies to comply therewith. In addition, they can facilitate the implementation and enforcement of a minimum wage. Finally, as guarantors of such an important task, their legitimacy is enhanced, both in the eyes of the public and of the State.

In order to assess how minimum wage fixing mechanisms work around the world, the CEACR prepared a General Survey of the reports on Convention No. 131 and Recommendation No. 135. The General Survey was based on reports submitted by 129 ILO member countries in addition to numerous comments provided by the national employers' and workers' organizations. The General Survey was presented at the 103rd Session of the International Labour Conference in 2014.

Although the General Survey dedicates one section to the operation of the minimum wage fixing machinery and another section to the representation of the social partners, it only briefly discusses the organizational characteristics of the relevant institutions. The same can be said of the recently published ILO Minimum Wage Policy Guide (ILO, 2016a). A solid institutional foundation for the minimum wage fixing machinery can vastly improve the legitimacy, fairness and outcome of the wage fixing process and this working paper complements the findings of the documents mentioned above. By combining the information from the General Survey with other ILO and external resources, an analysis of the minimum wage fixing machinery in 18 different countries was undertaken, with countries selected with a view to ensuring broad geographical coverage.

3. Institutional characteristics

Analysing the institutional characteristics of minimum wage fixing machineries is a complex task. As noted by Eyraud and Saget (2005), between unilateral determination by the State and bipartite agreements, there are numerous different combinations and variants of more or less binding consultations between the State and the social partners.

There are several ways of classifying these consultations. For example, Eurofound identifies the involvement of five institutions: governments, tripartite bodies, social partners, independent expert committees, and indexation by statute/law. It also identifies each stakeholder's degree of involvement as well as the actions undertaken, including provision of a binding or non-binding recommendation, or coming to a final decision and so on (Eurofound, 2017).

The amount of information needed for Eurofound's classification is substantial. Hence, this working paper employs an ILO taxonomy based on an assessment of the degree of involvement of the social partners. It identifies four major regimes and related sub-categories:

- Unilateralism (1 & 2): Government- or parliament-led adjustments without mandatory involvement of the social partners and with the option of using pre-set rules.
- Collective bargaining (3, 4 & 5): Social partners sign bipartite collective agreements at the sectoral or national levels. For sectoral agreements, certain countries provide an extension mechanism to all workers when specific coverage thresholds are reached.
- Social dialogue (6, 7 & 8): A social dialogue institution that includes social partner representatives is either consulted on fixing a minimum wage or it proposes a minimum wage adjustment or decides the outcome. The configurations of social dialogue institutions vary considerably.¹
- Other mechanisms (9 & 10): In a few cases, a non-representative institution may be established and consulted, or the government may consult the social partners directly and separately.

Table 1 provides examples of countries' minimum wage fixing mechanisms and their designation within the taxonomy described above.²

¹ Collective bargaining is a form of social dialogue that happens in bipartite settings where only trade unions and employers' organizations appoint members to act as representatives. The composition of other social dialogue institutions can be more complex. Bipartite-plus bodies include representatives of other organized interest groups, including consumers, cooperatives or even independent experts. Representatives of government participate in tripartite and tripartite-plus institutions.

² The literature also distinguishes between countries where a minimum wage is determined for the whole economy (universal regimes) at the national or regional levels, such as in federations, and cases where it is established differentially for various sectors, occupations or groups of workers, as with sectoral regimes. However, this type of distinction is not particularly relevant in the context of this working paper.

Table 1. Setting a minimum wage within various regimes

STATE UNILATERALISM			
	Government (1) Cyprus, Netherlands*	Parliament (2) Luxembourg, United States of America	
COLLECTIVE BARGAINING			
	Sectoral agreements without extension mechanism (3)	Sectoral agreements with extension mechanism (4)	National collective agreement (5)
<i>Bipartite</i>	Denmark; Sweden	Finland	Belgium; Estonia
SOCIAL DIALOGUE			
	Consultation with social dialogue institution (6)	Proposal by social dialogue institution (7)	Decision by social dialogue institution (8)
<i>Bipartite-plus</i>	Hungary	Germany, Japan	
<i>Tripartite</i>	Bulgaria, Portugal	France, Lithuania	Argentina, Jordan, Mexico, Turkey
<i>Tripartite-plus</i>	Poland**, Romania	Indonesia***, Kenya, Malaysia, South Africa	Islamic Republic of Iran, Republic of Korea
OTHER MECHANISMS			
	Consultation with specialized institution (9) Australia, United Kingdom	Consultation with social partners separately (10) China, Czech Republic, Morocco	

Source: ILO (2014).

Notes: *The adjustment is related to the evolution of negotiated wages.

**The Chair of the Polish Social Dialogue Council may invite representatives of other organizations and institutions, but otherwise the Council is tripartite.

***The Indonesian National Wage Council prior to the reforms of 2015.

3.1 Unilateral state approaches

When no formal consultations with the social partners or specialized bodies take place, the responsibility for fixing a minimum wage lies within the purview of the government or parliament.

The United States of America is an example of unilateral determination of a federal minimum wage rate set by Congress on an irregular basis, as maintained in the 1938 Fair Labour Standards Act. It is entirely within the remit of Congress to follow the course it deems appropriate. In fact, in the past there have been times when the minimum wage has not been raised, e.g., during President Reagan's tenure.

In the Netherlands, indexation³ of a minimum wage is mandated bi-annually by law (in January and July), but the Government may still act unilaterally if it so chooses. For example, the Ministry of Social Affairs and Employment can derogate from automatic adjustments if it believes that the adjustments may negatively affect employment, or if the developments

³ Law-based indexation can be used to maintain the value of minimum wages automatically. There are of course disadvantages: indexation may be too low, leading to an erosion of the minimum wage's real value, or too high, thereby hindering the fight against inflation (Schulten and Müller, 2014; ILO, 2016a). Hence, some correction may be necessary. Indexation may also clash with social dialogue. Firstly, it may be almost impossible to have a bi- or tripartite agreement regarding the exact formula to be employed, and this then calls for a guidelines-based approach. Secondly, if a formula is eventually agreed upon, this may be used as an excuse to avoid further social dialogue.

in social security schemes are expected to require a substantial increase in social security contributions or taxes.

According to those in favour of it, the advantages of state unilateralism are rapidity and avoiding stalemates in negotiations. However, there may be risks involved. The social and procedural legitimacy of a decision by decree can be low if the social partners do not endorse the overall process. For example, decisions may be politically motivated during electoral cycles or crises.

3.2 Collective bargaining

Traditionally, a fundamental distinction is made between regulating minimum wages through collective agreements and having a statutory minimum wage determined by means of other mechanisms (ILO, 2016a).⁴

The most common type of collective bargaining is one in which a minimum wage is determined by sectoral agreements that may or may not be extended by law or by government decision. In Finland, for example, the Ministry for Economic Affairs and Employment can extend collective agreements to cover an entire sector if certain requirements are fulfilled. Although this is not the case in Denmark and Sweden, the potential problem of coverage is mitigated by the fact that collective agreements in these countries cover more than 80 per cent or even 90 per cent of the workforce. A national minimum wage determined by collective bargaining is the rarest mechanism and is only currently in place in Belgium and Estonia. Until 2012 Greece also had this procedure in place.

No more than 10 per cent of all ILO member States have a minimum wage in force that is determined exclusively through collective bargaining, since this requires both the existence of strong social partners and extensive coverage. Collective bargaining can provide an efficient means for minimum wage determination due to its high social acceptability and the fact that it reflects local economic conditions. Problems may arise if weakened social partnership negatively affects coverage and social adequacy, as noted by Eyraud and Saget (2005).

In some cases, a statutory minimum wage has been introduced to complement insufficient or declining collective bargaining coverage. Due to traditionally low coverage rates, this occurred in the United Kingdom in 1999. In addition, the German case is particularly interesting. The liberalization of the labour market that occurred due to the Hartz IV reforms in the early 2000s reignited German productivity, but also created a number of problems. First, a rapid expansion of low-paid and precarious jobs that were not eligible for the social insurance system occurred. Second, there was a decline in the coverage of collective agreements from over 80 per cent in the mid-1990s to less than 60 per cent two decades later. Due to these factors, a political consensus emerged determining that this situation should be remedied because the social partners were unable to effectively promote the self-regulation of low pay.

⁴ There are important differences in the effectiveness of the two regimes regarding the reduction of poverty and inequality through a minimum wage – often measured through what is referred to as the bite of the minimum wage – and its impact on different aspects of inequality. Therefore, the degree of protection offered to low earners varies between countries. What is important here is the notion of equivalent protection (Kampelmann et al., 2013, p. 38): statutory minimum wages and sectoral agreements with high coverage are sometimes regarded as functional equivalents that provide an intermediate level of protection against low pay.

Consequently, the German State intervened in 2015 with the introduction of a statutory minimum wage and less restrictive criteria for the extension of collective agreements. These become applicable if the general interest calls for such a step, if employers and unions prove that a majority of workers are covered, and if an extension protects collectively agreed-upon standards to guard against negative economic developments (Lesch and Vogel, 2017).

3.3 Social dialogue institutions

By far the most common way of setting a minimum wage is through social dialogue institutions, which involve social partner representatives. As shown in Table 1, both the composition of these institutions and the role they have in this process can vary widely.

In the vast majority of cases, a social dialogue institution is either consulted by a government or a country's parliament, or it submits an independent proposal, often at predetermined times during the year. For example, by 15 June of each year the Polish Council of Ministers submits a proposal for adjusting the minimum wage and the planned date of enforcement to the Council for Social Dialogue. The Council then has 30 days to respond. Another example is the German Minimum Wage Commission. That body sends its autonomous proposal to the Federal Government, which then decides whether to make the adjustment legally binding through statutory means.

Institutions entrusted with making a final decision over minimum wage adjustments (subject to various degrees of government approval) are less common. This scenario is the case in the Republic of Korea. According to Eyraud and Saget (2005), the ratio of social dialogue institutions that provide non-binding opinions to institutions that make decisions is approximately five to one on a global basis.

Full involvement of the social partners in these institutions increases the social acceptability of the process and its fairness. However, success is not always guaranteed. When a social dialogue institution fails to agree, the outcome must be adjudicated by a third party, which is usually the government. This governmental involvement can lead to the politicization of a minimum wage adjustment.

In some cases, consultations may become an empty ritual (ILO, 2014; Schulten, 2014). For example, a government may submit its minimum wage proposal without allowing the social partners the opportunity to discuss or table a counter proposal, or it may ignore the proposals of the social partners, or it may not sufficiently guarantee the organization of meaningful collective bargaining. Even in cases where consultations have been planned, they may not come to full fruition.

3.4 Other mechanisms

Lastly, some countries apply consultation mechanisms that do not fit into the above categories but are different from unilateral determination. Two examples of such cases are: firstly, consultation with a specialized, but non-representative institution, i.e. where social partners are either not directly involved in the nomination of members or are involved only to a limited extent; and secondly, the option of direct, separate consultations with the social partners.

The Low Pay Commission in the United Kingdom is an example of a specialized, but non-representative institution since all of its members are selected through an open competition and commissioners perform work as independent experts. In contrast, governments in countries as diverse as China, the Czech Republic and Morocco consult the social partners separately and without the involvement of a specific institution that is entrusted with fixing a minimum wage.

Provided that minimum wage determination follows a fair and independent process that, in principle, guarantees a balanced decision, there is no reason to believe that such mechanisms are less effective than the other types of consultation mentioned above.

4. Case study analysis

The selection of cases is based on a wide geographical representation of countries where the minimum wage-fixing institution includes a significant role for the social partners. It excludes countries where the state sets the minimum wage unilaterally as well as those that rely on collective bargaining as the sole means of determining the minimum wage.

These 18 selected cases are listed in Table 2.

Table 2: Institutions responsible for the statutory regulation of a minimum wage

Region	Country and responsible institution
Africa	Egypt: National Council for Wages* Kenya: Wages Councils Morocco: Separate consultation of the social partners Senegal: National Labour and Social Security Consultative Council
Americas	Argentina: National Council for Employment, Productivity and the Minimum Subsistence and Mobile Wages Mexico: National Commission of Minimum Wages
Arab States	Jordan: Tripartite Committee for Labour Affairs
Asia Pacific	Australia: Fair Work Commission Indonesia: National Wage Council** Islamic Republic of Iran: Supreme Labour Council Japan: Minimum Wage Council Malaysia: National Wages Consultative Council Republic of Korea: Minimum Wage Council (part of the Minimum Wage Commission)
Europe	Germany: Minimum Wage Commission Poland: Social Dialogue Council Romania: National Tripartite Council for Social Dialogue Turkey: Minimum Wage Fixing Board United Kingdom: Low Pay Commission

Source: ILO (2014).

*The National Council for Wages in Egypt has been inactive for a number of years.

**Prior to the 2015 reforms.

The following paragraphs examine the characteristics and procedures of these different institutions, including issues such as the nomination of the chair and the number, gender and representativeness of members and external experts, as well as how they operate in terms of reaching a quorum, voting and final decision-making.

4.1 Nomination and representativeness of the social partners

The effective implementation of Convention No. 131 requires that the social partners must be consulted when fixing a minimum wage. This implies two things: that the institutions involved have a composition that is appropriate, i.e. that representatives of employers and workers are included, and that representativeness criteria are in place in order to enable the selection of the most representative organizations.

Regarding the nomination of workers' and employers' representatives, the case studies show that five different procedures are being followed:

- 1) the employer and worker representatives are determined by law (e.g., the chairs of employers' confederations and representative trade unions at the national level are members of the Romanian National Tripartite Council for Social Dialogue);
- 2) there is direct nomination by the employer and worker organizations (e.g., in Egypt, the Islamic Republic of Iran, Jordan, and Mexico) or conversely, indirect nomination (e.g., the National Labour Board in Kenya);
- 3) the employer and worker organizations propose one or more members who are then appointed by the government or the country's chair (e.g., Germany, Poland, the Republic of Korea and Senegal);
- 4) an open competition is announced by the government (e.g., the Department for Business, Innovation and Skills routinely announces vacancies for the Low Pay Commission in the United Kingdom);⁵
- 5) unilateral appointment by the government (e.g., the Minimum Wage Council and the Prefectural Labour Bureau, as provided by Cabinet Order in Japan; and the National Council for Employment, Productivity and the Minimum Subsistence and Mobile Wages in Argentina) or based on its recommendation (e.g., the Governor-General appoints members to the Fair Work Commission in Australia).

Whether or not there is fair representation of the employers' and workers' organizations in a given country is closely linked to the type of nomination that prevails. The main distinction is between countries where representativeness is formally assured and those where it is not.

For example, both the Australian Fair Work Commission and the Low Pay Commission in the United Kingdom require that knowledge in employment-related matters be a main criterion for appointment. The difference is that the Low Pay Commission designates its members as either workers' or employers' representatives based solely on their individual area of expertise.

Where some degree of representation is assured, modalities may vary considerably, ranging from the issuance of generic criteria for worker and employer organization representation,

⁵ However, the members of the Low Pay Commission work as independent experts. Technically speaking, they are neither workers' nor employers' representatives, although they are required to have a background in either business or worker relations.

as is the case in Japan, Jordan, Malaysia, Mexico and Morocco, to more formal criteria and requirements.

In Germany and the Republic of Korea, central employers' and workers' organizations propose prospective members. In Kenya, Wage Council meetings do not occur without the presence of the Central Organization of Trade Unions or the Federation of Kenya Employers, while in Senegal, the most representative workers' and employers' organizations propose eight members each in the industry sector, four in commerce and banking, one in agriculture and one in cooperatives. In certain cases, detailed criteria exist for one social partner only: in the Islamic Republic of Iran, worker representatives are selected by the High Centre of the Islamic Labour Councils; in Egypt, members of the General Federation of Egyptian Trade Unions are responsible for selection; in Argentina, the employers must represent both the State as an employer and 12 different sectors of activity. Even more detailed provisions are in place when the national social dialogue institution is directly responsible for wage setting, as is the case in Poland. In Turkey, five representatives are elected by each of the employers' and workers' organizations that have the most workers in various sectors of activity.

4.2 Nomination of external experts

Several councils that discuss minimum wages, including councils in Egypt, Germany, Iran, Japan, Kenya, Malaysia, Mexico, the Republic of Korea, Romania, Senegal, and the United Kingdom, also allow for the presence of external experts, such as academics or practitioners. These stakeholders may be chosen based on specific selection criteria prescribed by law. They may or may not be nominated with the approval of the social partners and may or may not have a vote during the decision-making process. There is a common perception that their presence enhances the legitimacy of a council's decisions.

Convention No. 131 states that, where it is appropriate to the minimum wage fixing machinery that experts participate in its operation, such experts shall be "appointed after full consultation with representative organisations of employers and workers concerned, where such organisations exist and such consultation is in accordance with national law or practice". Experts are individuals that have competence regarding the representation of the general interests of a country, as provided in Convention No.131. Recommendation No. 135 specifies that experts should be suitably qualified independent persons who may, where appropriate, be public officials with responsibilities in the areas of industrial relations or economic and social planning or policy-making.

Although the representation of employers and unions is assured in the majority of cases, the social partners are not always involved in the nomination and appointment of external experts. Several practices are followed as per the examples below:

- 1) the central employers' and workers' organizations have the right to nominate experts (e.g., within the German Minimum Wage Commission, the social partners nominate and the Federal Government appoints);
- 2) open competitions are announced by the government (e.g., Low Pay Commission in the United Kingdom);
- 3) the institution's members select experts, thus requiring the agreement of the social partners (e.g., the Tripartite National Council for Social Dialogue in Romania), or the chair invites external experts to participate (e.g., the National Council for Wages in Egypt; the National Commission of Minimum Wages in Mexico);
- 4) proposals and nominations are made by the Government (e.g., the Islamic Republic of Iran, Japan, Malaysia, the Republic of Korea, and Senegal).

In a number of countries, there are explicit rules stating that external experts shall be truly independent or unaffiliated. In Malaysia, the external experts must not be public officers, employers or members of any trade union. In Germany, they cannot be employed by either employer or worker organizations or institutions/bodies funded by either of these groups. In other cases, there are no such restrictions, but rather competence and skills criteria must be upheld. Examples include academic requirements in the United Kingdom, detailed provisions that are outlined in the Republic of Korea, or being a member of the Supreme Council for Industry, as is the case in the Islamic Republic of Iran.

As for voting rights, Germany, Egypt, Mexico and Senegal are examples of countries in which external experts do not vote.

4.3 Chairperson

Appointment of a chairperson to a minimum wage council or commission is not a requirement under Convention No. 131 or Recommendation No. 135. However, this is often key for the effective functioning of a minimum wage body. Particularly in cases where the chair is vested with special voting rights, including when a council is equally split on an issue and the chair has the deciding vote, the social partners should ideally be directly or indirectly involved in his or her appointment. There are several ways in which the chairperson may be chosen:

- 1) the chair is appointed by State officials in: Argentina (Minister of Labour), Australia (Governor-General upon recommendation by the Government), Germany (Federal Government with a joint proposal by the social partners), Kenya (Minister of Labour), Malaysia (Minister charged with responsibility for human resources), Mexico (President of the Republic), Poland (President of the Republic), Turkey (Minister of Labour and Social Security);
- 2) the council is chaired by the Minister of Labour or an equivalent position in France and the Islamic Republic of Iran. In Jordan, the Labour Minister has three deputies: the Secretary-General of the Ministry, the Presidents of the Jordan Chamber of Industry and the Jordan Chamber of Commerce, which rotate, and the President of the Jordan General Federation of Labour Unions. In Romania, the National Tripartite Council for Social Dialogue is chaired by the Prime Minister and the deputy is the Minister for Labour, Family and Social Protection;
- 3) the chair is selected internally from the Minimum Wage Council in Japan;
- 4) the Low Pay Commission in the United Kingdom is a special case, because even the position of chair is selected through an open competition.

Regarding the chair's affiliation and independence, several solutions are possible. In Japan, the chair must be independent from the tripartite actors and must be elected by council members from stakeholders who represent the public interest. In Malaysia the position may not be filled by a public officer or an employer or a union representative and, in the United Kingdom, the chair must represent the public interest.

In Poland, the chair of the Social Dialogue Council rotates between the Government, unions and employers on an annual basis. In Turkey, the chair is selected by the Minister of Labour from among members of the Minimum Wage Fixing Board who have been appointed by the Minister itself.

4.4 Number of members

There is no universal rule stipulating the number of members in the minimum wage councils or commissions. Several countries mandate a specific number. For example, Germany, the Islamic Republic of Iran, Senegal, Turkey and the United Kingdom are among those with such mandates. A number of councils operate with a specified range of representatives; for example, the Mexican National Commission of Minimum Wages is composed of five to fifteen representatives each of employers and workers, while the Malaysian National Wages Consultative Council comprises, at maximum, 29 members at any given time, of which there are at least five representatives each for workers, employers, the Government and independent experts. Finally, a few statutes indicate a mandatory ratio between the number of representatives of the social partners. Employers, workers and external experts in Japan have an equal number of representatives. The same is true for employers, workers and government officials in Jordan. In Indonesia, the proportion of workers, employers and government representatives in the National Wage Council was 1:1:2. Experts and academics were appointed based on the needs of the institution, whose total number of members had to be an odd number.⁶

Although, in theory, the number of members on a council should not matter, in practice the number does give rise to several trade-offs that may have opposite effects. Two of these trade-offs are of particular interest: the trade-off between the number of members and effectiveness, and the trade-off between the number of members and representativeness.

On the one hand, with regards to the first trade-off, the work of Tsebelis (2002) on veto actors shows that the higher the number of actors, or members of a council, and the greater their divergence on a policy issue, the lower the chances of agreeing on a solution that departs from the status quo. Hence, for the sake of efficiency, smaller councils are preferable to larger ones. The more numerous the members of a council the more difficult it is to reach a decision, especially if the voting method requires high, qualified majorities.

On the other hand, with regards to the second trade-off, the fewer the members, the more difficult it is to represent the plurality of views of the employers and workers. Therefore, in order to achieve better representation, it would be advisable to increase the number of representative council members. There are, however, effective ways of reconciling these tensions.

Specialized commissions are often either small or medium-sized. Small commissions of between eight and ten members are the norm in Germany, the Islamic Republic of Iran, Kenya and the United Kingdom, while Egypt and Turkey, with 15 and 16 members respectively, are part of the medium-sized group. Smaller groups composed of just three or four members would probably not be adequate to guarantee that all relevant interests are sufficiently represented. Moreover, it is important to guarantee that social partners participate meaningfully in all decisions through the setting of quora, that is, the requirement for the presence of a minimum number of members in order for decisions to be valid. By doing so, it is then possible to employ a variety of voting methods, ranging from unanimity to a simple majority, and still be assured that the social partners have contributed to the decision-making process.

In many countries, however, there are numerous members within a commission, especially where the national social dialogue institution itself is part of the minimum wage fixing machinery. For example, in Poland, the Social Dialogue Council has approximately 60 members. Large forums exist in other countries as well, including the following examples: Argentina, with 32 members, Malaysia with up to 29, Mexico with up to 33, the Republic of

⁶ Prior to the 2015 reforms.

Korea with up to 27, and Senegal with approximately 34. The higher numbers of representatives assure representation of different interests, but effectiveness is not always guaranteed. For example, after negotiations at the Polish Social Dialogue Council failed to yield positive results in 2016, the Government unilaterally adjusted the minimum wage (Eurofound, 2017).

Striking a balance between these trade-offs requires a number of steps. Firstly, an appropriate quorum must be determined. It is not sufficient for the majority of members to be present, as there may be social partners who are underrepresented or excluded. In the Republic of Korea, for example, there is the additional requirement that at least one third of worker and employer representatives be present in order for decisions to be valid. Secondly, there are ways to increase effectiveness, such as by restricting the number of votes that can be cast. The 22-member Slovenian Economic and Social Council, which is tasked with conducting consultations on minimum wages, allows each social partner and the Government to cast one vote, regardless of the number of their respective representatives.

4.5 Gender balance

With regards to the gender balance of the various councils, although there have been some positive recent trends, the overall situation is far from satisfactory. For example, Molina and Guardiancich (2017) reported that in 2016 the proportion of women in national social dialogue institutions was less than 20 per cent in nearly half of European Union Member States. Nonetheless, some good practice has emerged.

In Germany, the Minimum Wage Commission is composed of three members each from workers' and employers' organizations and two independent experts proposed by the worker and employer organizations. For each group, at least one member must be a woman and one a man, so as to guarantee gender balance. In the Canadian province of Saskatchewan, the Minimum Wage Act provides for the creation of a Minimum Wage Board with five members appointed by the Lieutenant Governor of the Council, of whom two must be women.

4.6 Quorum and voting

The quorum for a valid deliberation in a council as well as its voting procedures chiefly depend on its composition and the number of members.

The voting procedure requires a quorum in the following countries: Argentina (two thirds), Germany (half of the members with voting rights), Islamic Republic of Iran (seven members), Malaysia (two thirds, including the chairman), Mexico (51 per cent), Republic of Korea (majority, including at least one third of worker and employer representatives), Turkey (ten members, or two thirds).

As for voting, consensual decision-making either among the social partners or among all of the members is the norm in Jordan and is expected to be introduced in Romania (Eurofound, 2017). Simple majorities are needed in Germany, the Islamic Republic of Iran, Malaysia, Mexico, the Republic of Korea and Turkey. Only in Argentina is a qualified majority of two thirds of total attendees needed in order to pass resolutions.

4.7 Final decision

When the ordinary voting procedure does not lead to a decision regarding the minimum wage, either during consultation or negotiation procedures, it is often the government that has the final word. For example, this is explicitly stated in guidelines in Senegal. The Senegalese National Labour and Social Security Consultative Council's board meets at least

once every six months. The Minister responsible for labour submits relevant documents regarding the prospective minimum wage and the board has 30 days following the start of the session to issue an opinion. If no alternative opinion is put forward within the aforementioned period, the original proposal is considered to have been met with consensus.

There are several interesting cases where some sort of ad hoc adjudication procedure exists in the case of a disagreement between the stakeholders negotiating the fixing of a minimum wage. Such a mechanism is most needed when the social dialogue institution is given responsibility for deciding on the minimum wage and specific voting procedures are in place. Among the case studies, we extracted the following procedures:

- 1) the chair of the commission charged with fixing a minimum wage has special decision-making powers. In Malaysia and Turkey, the vote of the chairperson decides in the case of a tie. In Mexico, the votes of the absentee members are assigned to the chairperson. In Germany, the Minimum Wage Commission chairperson first abstains from voting, but if the resolution does not achieve a majority from the votes that are cast, the chairperson proposes a compromise. If this proposal fails, the chairperson will cast a vote;
- 2) the council of ministers is charged with taking the final decision, albeit with limitations, if the relevant committee cannot agree. In Poland, if the Social Dialogue Council does not reach an agreement, then the Council of Ministers decides. As a safeguard, it cannot fix a minimum wage lower than the figure contained in the original proposal. In Jordan, if the National Tripartite Labour Committee cannot reach a unanimous decision, then the proposal is submitted to the Council of Ministers so that it can determine the minimum wage;
- 3) the government cannot unilaterally impose a minimum wage in the case of disagreement with the relevant committee. However, in Japan, Malaysia and the Republic of Korea, the proposal can be sent back for a re-examination. The Korean procedure is presented below, as it is the most comprehensive of the three (see box 1.)

Box 1 Resolution of disagreements over minimum wage fixing in the Republic of Korea

The Minimum Wage Council of the Republic of Korea, which is charged with fixing the minimum wage each year, begins deliberations when requested by the Minister of Labour and Employment. The Council has 90 days to submit a proposal to the Government. Once received, the Minister must immediately announce the proposal publicly. Subsequently, national level representatives of workers and employers have ten days to raise any objections to the proposal by sending a letter to the Minister.

If the Minister considers a submitted objection to be reasonable or believes that there are issues with the minimum wage proposal received from the Minimum Wage Council, the Minister will request that the Council deliberate the proposal once again and subsequently submit a revised version. The Council then has the option of either changing the initial proposal or confirming it in a period of no less than ten days. In order for a confirmation of the initial proposal to be completed, there are strict requirements: if the Minimum Wage Council votes with all members present and a two-thirds majority, then the Minister of Labour is obliged to fix the minimum wage in accordance with the proposal. The minimum wage shall then come into force on 1 January of the following year.

5. Concluding remarks

This working paper has analyzed the role of the social partners, and social dialogue in particular, within the minimum wage fixing machinery of ratifying countries, as provided for by Convention No. 131. Its primary purpose was to outline different practices in institutional design and to highlight those practices that improve the legitimacy of the process and the final output of minimum wage fixing.

The following general conclusions are drawn.

- Social dialogue, in the form of direct participation or consultation of the social partners, increases the procedural legitimacy of the wage fixing process, as well as its output legitimacy, because the social partners are most knowledgeable regarding prevalent conditions in the labour market. Evidence-based social dialogue also requires that reliable and timely data and analysis be provided to the social partners by government or by independent experts in order to help them form opinions.
- However, not all institutional configurations that involve the social partners are equal in their effectiveness. There is a need to carefully design institutions so that the effectiveness of social dialogue can be optimized and lead to decisions that take the views and arguments of the social partners into consideration to the fullest extent possible. Decision-making rules must be established, including for situations in which the social partners cannot reach an agreement on a decision or a recommendation. This is a critical condition to avoid deadlocks that may be harmful to both sides.

Once an institutional form for the wage fixing machinery is chosen, there are some additional features to be considered.

- The requirement in Convention No. 131 that the social partners be consulted when fixing the minimum wage implies that the related councils or commissions have included representatives of employers and workers, and that their nomination follows pre-determined and objective criteria (ILO, 2017b):
 - 1) the social partners can either directly nominate or propose the representatives that are to be confirmed by the government subsequently. Both procedures assure a high degree of representation and are preferred to unilateral governmental appointment or excessively rigid legal rules, which may not reflect changing circumstances in the representativeness of social partners (e.g., the head of a specific trade union or employers' organization having a pre-established seat on the minimum wage council);
 - 2) contextually, there must be pre-determined and objective criteria in order to select the most representative social partners. One approach is to follow the pre-existing rules regarding representation and apply them to the council that is overseeing the fixing of the minimum wage, such as is the case in Germany, the Republic of Korea, Senegal and other countries
- An effective way of increasing the authoritativeness of the institution fixing the minimum wage is by including independent experts in the process. Their involvement is beneficial since they provide technical expertise and advice that strengthens the soundness of the analysis on which the institution's recommendations are based. This in turn enhances the credibility of the minimum wage machinery.
 - 1) There are essentially two methods to appoint external experts: through the direct consultation of workers' and employers' organizations, or by resolution of the

minimum wage council itself, provided that it is sufficiently representative of the social partners' views and positions;

- 2) Moreover, it is generally considered good practice to have the external experts represent the general interest and not be affiliated with either of the social partners.
 - 3) It is not necessary to grant voting rights to experts.
- Chairs of minimum wage councils play a crucial role, as they are often the final arbiters in cases where an agreement among the partners is not possible. The election of a chair by a council, or a government appointment after consultation with the social partners are both considered good practice. Oftentimes the minister of labour holds this position, and this enhances the political salience of the process, provided that it does not disproportionately concentrate authority. An open competition to fill the position, as is the case in the United Kingdom, is a method of selection that can ensure political independence and recognized competence.
 - The size of a council is a relevant factor for ensuring smoothly functioning operations. Despite the absence of specific guidelines, small or medium-sized councils are considered to be a good compromise: in Germany, of the eight members of the Minimum Wage Commission, three represent workers, three represent employers and two are experts; with the Low Pay Commission in the United Kingdom the ninth member of the Council is the chairperson; in Kenya, Wages Councils include up to three representatives each of employers and workers and up to three external experts in addition to the chairperson. Relatively small councils ensure an adequate representation of the social partners, but they also avoid the risk of paralysis that sometimes characterizes decision-making in much larger fora.
 - Only a few countries have a rule in place regarding the gender composition of a council. Good practice in this regard is observable in Germany, where each social partner has to appoint at least one woman and one man as representatives. This same rule applies to external experts.
 - The quorum and voting mechanism within a minimum wage council depend on its size and composition. In order to ensure that all partners are represented while maintaining an uncomplicated voting structure, it is important to stipulate that a minimum number of representatives of each social partner is present during decision-making. This is a requirement in the Republic of Korea, for example.
 - The final decision is often the result of a vote. However, when no agreement is reached by the social partners, the government often makes a unilateral decision, and this may reduce the legitimacy of the adopted wage rate. A number of mechanisms can be put into place to mitigate such an outcome:
 - 1) if a government has final decision-making power, this can be subject to certain limitations, such as is provided in Polish legislation, for example. Alternatively, the government's decisions can be guided by transparent adjustment criteria;
 - 2) if a government objects to a minimum wage council's decision, it can send the proposal back to be re-evaluated by the council through various mechanisms, a protocol that exists in several Asian countries;
 - 3) if the chair of the minimum wage institution is vested with extraordinary voting rights, he or she should either be independent, as in the case of Japan, or jointly nominated by the social partners, as is the case in Germany.

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