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journals.sagepub.com/home/trs**Nathan Lillie**

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The new European Union Minimum Wage Directive (2022/2041) is rightly seen by many as a victory for European labour. It will protect lower-paid workers and promote collective bargaining (Schulten and Müller, 2022). Hassel (2023) regards it as signalling a change in direction for EU politics, from broadly neoliberal marketmaking to social protection and partnership. The Directive explicitly encourages collective bargaining and sets targets to increase it, while also providing guidelines and targets for increasing minimum wages in ways that recognise the diversity of wage determination practices across the EU. The scope and tone of the new Directive sets out an unambiguous purpose and direction, to protect workers and support collective bargaining. This sets it apart from other recent directives, such as the so-called ‘Enforcement Directive’ (2014/67), which just seeks to enforce existing law, and the Posted Workers Directive (revised) (2018/927), which seeks to ‘balance’ the rights of firms and workers rather than to protect workers. Just as importantly, it sets out processes for calculating what constitutes an adequate minimum wage (60 per cent of median and 50 per cent of average wages), and mandates that Member States with under 80 per cent collective bargaining coverage should set out implementation plans to increase their coverage.

The assent of Nordic unions is testament to the clever design of the compromise behind the proposal. It shows sensitivity to their desire to head off any possibility of Brussels interfering with Nordic collective bargaining systems, while also providing useful mechanisms to push for higher minimum wages and stronger collective bargaining in countries where that is needed. Also notable is the way the Nordic unions overcame their long-held scepticism towards European labour regulations, and specifically their opposition to any mention of a minimum wage manifesting in European legislation. This may reflect a softening of the Nordic unions’ stance, but certainly also the Directive’s approach, which recognises the centrality of collective bargaining to wage determination in many EU countries.

The Finnish discussion of the Directive, for example, was largely focused on reassuring everyone that nothing would change; as a headline in the *Uusi Suomi*: ‘Minimum wage comes to the EU – in Finland, no major changes are anticipated’ put it (Koho, 2022). It is more or less taken for granted that this is the best possible outcome for Finland, on the assumption that labour standards emanating from Brussels at best do nothing for Finland, and at worst undermine or overrule Finnish standards. I will argue that this perspective takes insufficient account of the usefulness, also to Nordic unions, of minimum wages and EU-wide regulations.

Through worker posting and labour migration, cracks are emerging in the Nordic labour markets. In these circumstances, quasi-minimum wages, in the form of extended collective agreements,

have already proven useful in Finland and Norway to regulate the conditions of migrant workers from lower-wage EU Member States. Furthermore, raising wages and supporting collective bargaining in lower-wage countries will remove some of the downward pressure on wages in labour markets in which posted and migrant workers are present, by increasing the reservation wage of these workers. In other words, European regulation, appropriately designed, can serve to protect rather than undermine the Nordic model.

Explaining Nordic unions' opposition to European labour standards, and to minimum wages

Nordic labour unions have long been sceptical of EU labour standards regulation, and, in particular, have opposed setting an EU-level minimum wage (Eldring and Alsos, 2014; Fernández-Macías and Vacas-Soriano, 2016; Furåker, 2020). This seems counter-intuitive at first but arises out of a conviction that wage regulation is best handled through trade union negotiation. Scepticism about EU labour regulation arises from the Nordic model of industrial relations, which Nordic unionists perceive as highly successful, and superior to other systems (Seeliger, 2018). There is a concern that employers in the Nordic countries will try to use the EU-level standards, which will inevitably be at a 'lowest common denominator' level, to pressure Nordic unions to settle for lower wages and conditions at home. At the same time, Nordic unions see little potential gain from instituting minimum wages at home, because union density and collective bargaining coverage are very high, so few workers stand to benefit. In other words, they follow the adage 'if it ain't broke, don't fix it'. This attitude has long been a frustration to unions and labour rights advocates elsewhere in Europe, where European regulation can sometimes provide a lever to win better conditions against intransigent national governments and employers.

The notion of the 'Nordic Model' of industrial relations emphasises similarities between Danish, Finnish, Icelandic, Norwegian and Swedish industrial relations. Elements include high union density, well organised employers, a Ghent system in which unemployment insurance is connected to union membership, influence of organised labour and employers in policy-making, strong industry-level bargaining institutions, a unitary system of union representation on the shop floor, and relatively low wage dispersion. Union density levels in 2016 were 52 per cent in Norway, 65 per cent in Finland, 84 per cent in Iceland, 66 per cent in Sweden, and 67 per cent in Denmark, placing these countries almost in a class of their own, well above other European countries, except Belgium (Logue, 2019). Collective bargaining coverage tends to hover a bit above union density.

The purposes of a minimum wage are (i) to prevent 'working poverty', or a situation in which jobs do not pay sufficiently for a worker to maintain a decent standard of living, and (ii) to ensure labour market stability by limiting wage competition. These aims can also be achieved through collective bargaining, but legislation is more universal, as it does not require that unions ensure enforcement. On the one hand, some groups of workers have difficulty forming unions, and the minimum wage protects them, but on the other hand, workers who might have formed a union may decide that unions are not needed as they receive the minimum wage anyway. Such workers become 'free riders', benefiting from union action to maintain the minimum wage, but without paying dues or lending political support to the labour movement.

Although unions ensure very broad coverage via collective agreements, there are exceptional cases in which workers are not covered by collective agreements. 'Universal' Nordic welfare states nonetheless ensure that even workers maintain a high reservation wage (Esping-Andersen, 1990). At the low end, employers must offer wages high enough to lure workers off social benefits. In Finland, for example, precarious work as a growing cause of deep poverty, in the sense evident in

many other countries, is not widespread (Pyöriä and Ojala, 2016). While the growing importance of worker precarity is recognised in Finnish research (Jakonen, 2014), effective universalist institutions in industrial relations and the welfare state have protected Finnish workers from its worst effects (Mustosmäki, 2017). Active labour market policies and a general turn to more conditional benefits, particularly if the programmes are punitive and appear pointless to the ‘beneficiaries’, can reduce the reservation wage (Kananen, 2012). Still, Nordic countries’ welfare programmes limit the degree of desperation to which unemployed workers are subjected, so it is relatively less important to institute a minimum wage in the Nordic countries than it is elsewhere.

Nordic systems are not identical, however, and not all elements of the model are present to an equal degree, or at all, in every Nordic country. For example, Norway does not have the Ghent system, and Finland allows non-union as well as union unemployment funds. The sum of the elements creates a similar dynamic, however, in which unions strongly prefer to regulate wages and working conditions through collective bargaining rather than legislation. This preference is expressed in their political stance both at home and in Brussels.

Extended collective agreements as establishing minimum wages

Nordic countries do not have minimum wages, but Finland and Norway use extended collective agreements to serve the same functional purpose where posted and migrant workers are concerned. This at once undermines the free rider argument against the minimum wage – because extension serves to preserve the collective agreement rather than subvert it – as well as revealing a crack in the Nordic labour market model which could be repaired by raising wages in posted and migrant worker sending countries.

A key difference between Nordic countries, relevant to minimum wages and to the objectives of the Directive, is the use of legal extension for collective agreements. Legally extended collective agreements involve the state approving the application of a collective agreement by a union and employers’ association across the whole of the sector. A worker, or the union, can take legal action against an employer who pays less than the collective agreement, to recoup the difference. This is regardless of whether the worker is a union member, or the employer is party to the agreement. Employers are free to pay more if they wish, and often do. An extended collective agreement essentially functions as a minimum wage for a sector, except that it will also set higher wage levels for more responsible jobs, higher skill levels, and greater seniority, as well as adding supplementary payments for things like night work, or working away from home. Legal extension of collective agreements does much of what a minimum wage would do, and more, because it protects highly skilled, but vulnerable workers. Legal extension places unions at the centre of both negotiation and enforcement, which is useful if the unions are strong and assertive enough to take advantage of this.

Legal extension is common practice in Finland and Iceland. In Norway it was introduced in 2008, through activation of a dormant 1993 law, as a way of regulating the wages of posted migrant workers in shipyards; this mechanism has since been applied to other industries, but remains limited to sectors where temporary migrant workers are present. The discussion around this very much regarded it as a form of minimum wage, or at least a functional minimum wage substitute (Alsos and Ødegård, 2019). In Finland, legal extension is more broadly used, but also serves as an important tool for regulating the wages of posted workers in construction and in metalworking (Lillie, 2012). In Sweden and Denmark, on the other hand, there are no legal provisions for legal extension, and unions oppose it. In Denmark, unions have used multi-faceted industrial pressure and company-level labour clauses to represent posted workers, which is effective but resource intensive (Arnholtz and Refslund, 2019). Swedish unions have mostly sought to

ignore the problem, and not engaged with government or employer proposals to legitimate a dual labour market. Both countries have seen the growth of a dual labour market via precarious migrant work in posting sectors (Arnholtz, 2022).

Worker posting provides employers with opportunities to segment the labour market because, under EU law, only certain aspects of employment may be regulated by host-country institutions. Minimum wages and extended collective agreements are favoured under EU jurisprudence, because the European Court of Justice has found these to be more transparent than collective bargaining (*Laval un Partneri Ltd v Svenska Byggnadsarbetareförbundet* C-341/05). In Finland, the use of extended collective agreements is the backbone of union strategy to ensure decent wages and conditions for migrant workers. The *Sähköliitto* decision (C-396/13) confirmed this method of wage determination, and the Posted Worker Directive (PWD) (revised) codified it in secondary legislation (Rocca, 2019).

Despite extension providing theoretically universal collective bargaining agreement coverage in posting sectors, enforcement remains a major challenge. The Finnish construction union, for example, devotes considerable resources to monitoring the conditions of posted and migrant construction workers and ensuring that these comply with the industry collective agreement. The union enforces the collective agreement either in court or through pressure tactics such as secondary strikes. These tactics are legal only because the union is protecting an extended collective agreement: in a voluntaristic system, use of such methods would violate the free movement rights of the company being sanctioned (Lillie, 2012). Thus, the Finnish system is well structured to act under the constraints and opportunities of *Laval*, *Sähköliitto* and the PWD (revised), while the Swedish and Danish systems experience tensions due to the absence of legal extension. However, legal extension is no panacea, as it only gives a legal right to a certain wage: ensuring that this wage is paid is another matter.

In cases where legal extension is present, it would seem that a minimum wage from the sending country would be irrelevant because it would likely be less than what the posted workers are already entitled to in the Finnish construction collective agreement. Although posted workers are entitled to it legally, however, they do not *feel* entitled. Anna Matyska (Matyska, 2019), an anthropologist who spent time with many Polish posted workers in Finland and Norway, writes that there is an implicit bargain between the posting employers and their workers. They regard sending-country wages but not host-country wage norms as an important reference point in that deal. Posted workers sometimes undertake collective action, contact host-country labour unions, or go to court in the sending country to recover wages, but this is only when the employer violates the terms of this implicit bargain.

Sending-country reference points, such as minimum wages and collective agreements, are crucial in determining what posted workers will accept. Similar to Matyska's findings, in our Secure Mobility project,¹ interviewing posted workers from around Europe we found that workers from high-wage welfare states were more assertive in protecting their rights, while those from lower-wage EU countries with weaker welfare states were less so. Sometimes, the collective agreements of host countries came into play, but more frequently it was sending-country conditions that set their 'red lines'. This means that wage formation in lower-wage EU countries is important for shoring up gaps in Nordic wage bargaining systems. For workers in low-wage countries, minimum standards change the level of wages to which they feel entitled, closing the gap with host-country wage levels, giving employers less incentive to cheat.

1 Secure Mobility: Uncovering Gaps in the Social Protection of Posted Workers, EaSI Programme, DG Employment, European Commission.

Protecting the Nordic model through EU regulation

Nordic unions are sceptical of proposals for minimum wages and EU regulation because they believe that positive effects in their countries would be negligible, while on the other hand they think minimum wages and EU regulation might create an opening for employers to question the value of collective bargaining. It is true that the universality of collective bargaining in Nordic countries means that few workers in those countries would be affected by minimum wages, but on the European scale, the same situation does not apply. Many EU countries have low unionisation rates and bargaining coverage. On a pan-European scale, minimum wages and collective bargaining become complementary tools, in that stronger wage formation mechanisms in posted and migrant worker-sending states help receiving countries also to better regulate their labour markets.

If unions in Nordic countries decide they want a minimum wage, or if Swedish and Danish unions decide to push for legal extension, they probably do not need an EU Directive to achieve this. Finnish and Norwegian application of legal extension to posted and migrant work shows, however, that it is useful to regulate the work of difficult to organise groups on the labour market. Labour markets are dynamic, and other such groups may appear in the future. Minimum wages may be needed at some point; at that point, the power resources Nordic unions currently enjoy may no longer be available, and the Directive might take on new importance.

In the current context, however, the most important outcome is the boost the Minimum Wage Directive can give to help institutionalise wage formation in lower-wage EU Member States. EU union policies should be driven by the needs of Europe's weakest unions and poorest workers to achieve greater structural bargaining power. Nordic unions stand to benefit from this, because it will shore up their efforts to protect the collective agreements and wage norms in industries in which intra-European mobility is high.

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References

- Alsos K and Ødegård AM (2019) Shifting employer strategies in light of institutional change. In: Arnholtz J and Lillie N (eds) *Posted Work in the European Union*. New York, NY: Routledge, pp. 50–69.
- Arnholtz J (2022) The embedded flexibility of Nordic labor market models under pressure from EU-induced dualization—The case of posted work in Denmark and Sweden. *Regulation & Governance*. Epub ahead of print 11 March 2022. DOI: 10.1111/rego.12461.
- Arnholtz J and Refslund B (2019) Active enactment and virtuous circles of employment relations: How Danish unions organised the transnationalised Copenhagen Metro Construction project. *Work, Employment and Society* 33(4): 682–699.
- Eldring L and Alsos K (2014) European minimum wage: A Nordic outlook—An update. Fafo paper, 21. Oslo, Norway: Fafo.
- Esping-Andersen G (1990) *The Three Worlds of Welfare Capitalism*. Princeton, NJ: Princeton University Press.
- Fernández-Macías E and Vacas-Soriano C (2016) A coordinated European Union minimum wage policy? *European Journal of Industrial Relations* 22(2): 97–113.
- Furåker B (2020) The issue of statutory minimum wages: Views among Nordic trade unions. *Economic and Industrial Democracy* 41(2): 419–435.
- Hassel A (2023) Mission impossible? How to increase collective bargaining coverage in Germany and the EU. *Transfer: European Review of Labour and Research* 28(4). DOI: 10.1177/10242589221149513.

- Jakonen M (2014) Uusi työ ja prekarisaatio. *Tiede and edistys* 39(4): 287–320.
- Kananen J (2012) Nordic paths from welfare to workfare: Danish, Swedish and Finnish labour market reforms in comparison. *Local Economy* 27(5–6): 558–576.
- Koho S (2022) Minimipalkka tulee EU:hun – Suomessa ei luvassa suuria muutoksia. *Uusi Suomi*, Politics. Available at: <https://www.uusisuomi.fi/uutiset/minimipalkka-tulee-euhun-suomessa-ei-luvassa-suuria-muutoksia/f4eb41e6-34c8-44ae-ab43-d639c32a7457> (accessed 29 November 2022).
- Lillie N (2012) Subcontracting, posted migrants and labour market segmentation in Finland. *British Journal of Industrial Relations* 50(1): 148–167.
- Logue J (2019) Trade unions in the Nordic countries. *Nordics.info* 18, February 2019. Available at: <https://nordics.info/show/artikel/trade-unions-in-the-nordic-region/> (accessed 29 November 2022).
- Matyska A (2019) Ambiguous mobility: Polish transnational workers navigating and changing the institutional landscape of posting. In: Arnholtz J and Lillie N (eds) *Posted Work in the European Union*. New York, NY: Routledge, pp. 70–88.
- Mustosmäki A (2017) *How bright are the Nordic lights? Job quality trends in Nordic countries in a comparative perspective*. PhD Thesis, Jyväskylä studies in education, psychology and social research, University of Jyväskylä, Jyväskylä, Finland.
- Pyöriä P and Ojala S (2016) Precarious work and intrinsic job quality: Evidence from Finland, 1984–2013. *The Economic and Labour Relations Review* 27(3): 349–367.
- Rocca M (2019) Stepping stones over troubled waters. Recent legal evolutions and the reform of the posting of workers directive. In: Arnholtz J and Lillie N (eds) *Posted Work in the European Union*. New York, NY: Routledge, pp. 167–184.
- Schulten T and Müller T (2022) The European Minimum Wage Directive: Change of direction in European labour relations? In: Abstracts from ILERA conference: Industrial relations and the green transition, Barcelona, 8–10 September 2022, p. 31. Barcelona, Spain: Universitat Autònoma de Barcelona.
- Seeliger M (2018) Why do (some) European trade unions reject minimum wage regulation? *Culture, Practice and Europeanization* 3(1): 37–46.