

The Definition of ‘Adequate Remuneration’

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This paper is an SLP (Scottish Low Pay Unit) briefing on the European Committee of Social Rights’ definition of ‘adequate remuneration’ (in relation to Article 4 Paragraph 1 of the European Social Charter) and its usefulness as a measure of low pay.

The European Social Charter was adopted in 1961 and brought into force in 1965. It was revised in 1996 and entered into force in 1999. Under this charter, which is legally binding, all Contracting Parties (including the UK Government) are required to comply with Article 4 paragraph 1 which states that workers must receive adequate remuneration.

The European Committee of Social Rights (ECSR) initially used a calculation of 68% of average gross earnings, taking into account compensatory factors such as tax and welfare benefits, to establish a threshold below which remuneration would not be considered adequate. However, as no framework existed for assessing the weight of these compensatory factors, ECSR was forced to abandon the use of this calculation and declared itself unable to assess compliance with Article 4 paragraph 1 taken from the European Social Charter (Revised 1996). Despite this, the calculation of 68% of average gross earnings continued to be used (without reference to compensatory factors) for many years by a number of bodies in the UK, primarily being championed by the London-based Low Pay Unit under the title ‘Council of Europe Decency Threshold’. This threshold was used as a measure of low pay in political and social campaigning and lobbying, by Trade Unions in pay bargaining and as a comparator in pay related research.

Unknown to organisations in the UK, the ECSR had formulated a new calculation intended to allow them to assess compliance with Article 4 paragraph 1. This calculation, 60% of net average earnings, was chosen by the committee because it would allow for redistributive tax systems and also because it would reflect the take-home pay of workers. When this was brought to the attention of the Low Pay Unit, it ceased to use the outdated calculation but chose not to adopt the current one, partly because of the difficulties in obtaining an accurate measure of net average earnings in the UK and partly because it believes it ‘obscures the general effectiveness of the Decency

Threshold’, which could be assumed to refer to the fact that the actual figure resulting from this calculation is far lower than the Low Pay Unit’s previous interpretation, the ‘Council of Europe Decency Threshold’ (see appendix 1). It is probable that, as most other parties in the UK using this threshold gained the calculation from the Low Pay Unit, its use here will virtually cease. The Secretariat of the European Social Charter disagrees with the Low Pay Unit’s prognosis on the usefulness of the current calculation (which the Scottish Low Pay Unit would refer to as the ‘ECSR Adequate Remuneration Threshold’), citing both the reasons why the calculation was chosen and the flaws inherent in the previous calculation’s use of compensatory factors, which were not taken into account by the Low Pay Unit (see appendix 2).

The true test of the Thresholds’ usefulness as a measure of low pay in the UK should be whether the ECSR perceives the UK Government to be in compliance with Article 4 paragraph 1. In the most recent published conclusions on this, Conclusions XVI-2 Volume 2, the ECSR’s verdict was non-compliance. The Government had failed to provide information on the Adequate Remuneration Threshold for the UK. The ECSR estimated, by examining Eurostat information on average monthly net wage of a single male worker in manufacturing, that the UK could not be in compliance. However, the Eurostat information is not relevant to all genders and occupations in the UK workforce and therefore could be regarded as unsuitable for use in the calculation. Confusingly, despite the aforementioned difficulties in assessing the weight of compensatory factors, elements of the ECSR’s response to the UK report seemed to suggest that if such factors were presented they would be taken into account (see appendix 3).

Below is an overview of the positive and negative attributes of the ECSR Adequate Remuneration Threshold:

For:

1. A defined monetary threshold such as the ECSR Adequate Remuneration Threshold provides a valuable tool for campaigning against low pay and lobbying for a higher National Minimum Wage.
2. It takes into account what the worker actually receives, by using net figures – net minimum wage as a percentage of net average wage, which should be above 60% to show compliance.
3. Net figures also ensure that a country with a redistributive tax system will not be unfairly accused of allowing inequalities to persist where there is a large gap between average gross earnings and the minimum wage.

4. The fact that this calculation is used by the ECSR to assess all contracting parties means that it would be possible to compare each country's level of compliance with Article 4 paragraph 1.

Against:

1. The Adequate Remuneration Threshold gives a lower monetary value than the widely used 'Council of Europe Decency Threshold', as interpreted by the Low Pay Unit, and therefore comparatively less useful in pay bargaining.
2. No official statistics on average net earnings are provided by the UK Government, making reliable calculation difficult.
3. Attempts to calculate average net earnings would be hampered by the fact that bonuses and gratuities are to be taken into account – low paid workers do not usually receive such benefits and so the resulting figure would not be reflective of the position of the people it was intended to assist.
4. Confusion as to whether 'compensatory factors' may be taken into account, and if so, how they should be assessed.

The opinions set out in the following appendixes will doubtlessly provide UK organisations with difficulty in deciding whether the ECSR Adequate Remuneration Threshold is as 'simple and robust' as the Council of Europe Decency Threshold was previously considered to be. This also raises an important point about the dangers of 'thresholds' and statistics in general. The Scottish Low Pay Unit (SLPU) and other users of the Council of Europe Decency Threshold were entirely unaware of its flaws, and could conceivably have remained so were it not for a chance correspondence between the Secretariat of the European Social Charter and the SLPU. Whilst researching the subject, the SLPU received information from several Members of the European Parliament – even they had been unable to discover information on the ECSR Threshold, beyond what was available on the Low Pay Unit website (information added just prior to the organisation's closure). Underfunded and time-constrained researchers usually don't have the opportunity to source the exact origin of each piece of information used, and the creation of measures which fail to stand up to scrutiny leaves research or campaigns based on these measures open to ridicule.

Appendix 1

A statement from the website of the London-based Low Pay Unit.

Council of Europe Decency Threshold

How the Council of Europe has redefined its Threshold of Decency and why it is now less useful

Background

As long-term supporters, our partners within the NGO sector, and the wider labour movement know, the Unit has for some time promoted the Council of Europe Decency Threshold as both a mechanism for broadening the parameters of the minimum wage debate, and as an aspiration for all those who strive to see a statutory floor for wages that is truly worthy of those working in the world's fourth largest economy.

The original Decency Threshold was established in Europe's Social Charter, first drawn up in 1994, and we have been proud to maintain our support for a touchstone that charged all EU Member States to work towards a minimum remuneration level that would drop no lower than 68 per cent of their citizens' average earnings. In the main, our support sprang from the Council's recognition that modern industrial economies are not static, and that all citizens should benefit from any general rise in earnings. This recognition, and the desire to ensure that those working in the lower deciles of Europe's labour markets should not be forgotten as more fortunate citizens enjoyed the benefits of steady economic growth, lay at the heart of a simple but robust calculation that provided both a goal and a tool of analysis for ordinary people and dedicated campaigners alike.

However, although the main articles of the Social Charter remain unchanged, the definitions of some of its main tenets have been revised. And in this case it is the Charter's definition of 'fair remuneration' – as laid out in Article 4, paragraph 1 – that has forced the Unit to reluctantly abandon its association with the Decency Threshold.

Original definition

Under the original Charter, 'fair remuneration' was defined as **68 per cent of average earnings** within each signatory's national economy. More recently, however, the 'Committee of Experts' who examine and seek to update any definition that they feel has become outdated because of economic or social developments, have altered the definition of 'fair remuneration' with these developments apparently in mind.

New definition

The main alteration, and main problem, of the definition is that it is now set at **60 per cent of net earnings**.

The Unit believes that this re-definition has served to obscure both the general effectiveness of the Decency Threshold as a means for poorer European citizens to hold their governments to account, and has buried its value as a tool of analysis with unnecessary complications that only the statisticians in the service of the Member States can hope to unravel.

Why the change was made

The Committee of Experts argue that the original definition has become outdated because it was set under a 'male breadwinner' framework, and so has become unwittingly biased against the growing number of European women now working as individuals or contributing to their family's income – or indeed now being their family's main breadwinner themselves. However, the Committee does not address the sad reality that women workers across Europe still earn less than male counterparts and do not explain why their efforts for greater gender balance have contributed to their decision to set the new definition as a net earnings figure.

What the Committee does state in respect of a net figure is that the new definition should reflect the proposed enlargement of the EU and the increasing diversity in the wage structures and dispersion within the growing number of Member States – with particular reference in this regard to the new democracies of Central and Eastern Europe. The Committee's qualification in respect of the Decency Threshold as a target if not a strict requirement at this moment in time, appears in the statement that they would expect every Member State to set its minimum wage at a level that ensures a 'decent standard of living in real terms for a worker' – that is, it must be clearly above the poverty line for a given country.

Problems of the new definition

The Committee also seek to anticipate criticism that their revised definition lowers the required standards for the advanced economies of existing Member States by emphasising that they do not consider different models of a minimum guaranteed income to be valid claims that the revised decency threshold is being met. That is, no Member States' minimum guaranteed income model (in short, in-work benefits) are linked to the wage of a full-time worker so as to increase the level of the minimum wage specifically, and so are not relevant to the assessment of conformity under Article 4 paragraph 1.

Crucially, however, where the Committee's revised definition becomes distinctly opaque and where its value is significantly undermined, is found in its explanation of 'the net value':

... i.e., after deduction of social security contributions and taxes, of the total wages, in principle both monetary and in kind, paid regularly by an employer to a worker for work carried out. Account shall where applicable be taken of bonuses and gratuities not paid regularly with each pay packet.

Indeed, the inherent complexity of this short designation renders any attempt to discern the 'net value' fraught with difficulties. Member States' official statisticians will have access to data that can produce an estimated monetary value of what 60 per cent of average net earnings actually is, but payments in kind are notoriously difficult to track and collate – even more so if seeking to estimate a mean value for all such payments.

In the case of Britain, this would require attaching a valid monetary value applicable to all 28 million British workers, as well as accurately accounting for all those who do not receive bonuses or payments in kind – something familiar to most low-paid workers especially. For NGOs and other analysts, attempts to calculate this net value will be very difficult, not least because in Britain the government do not release adjusted net values of annual earnings for scrutiny. One could apply an estimation of average tax deductions, taking account of the different earnings bands, but any figures presented would require such complex qualification and explanation that the effectiveness of the Decency Threshold as a valid measure would too easily become lost in arguments over how the calculation was made, the reliability of data, and so on.

Of course, according to the requirements of the revised Social Charter, individual Member States should include the 60 per cent of average net earnings figure as part of their reports to the Council of Ministers. The UK government as not, as yet, supplied its 2001/2002 report to the Council but the Unit will examine it once it is available.

The future

The Unit is also working with European NGO partners to produce a 'league table' of EU minimum wages in order to determine what each Member States' national minimum wage is as proportion of its average wage. We hope to publish our findings early in 2003.

However, it is with regret that considering the Committee of Experts decisions in relation to the Decency Threshold, and the ratification of these alterations by the Member States, that the Unit must reluctantly abandon the use of the Decency Threshold figure as a campaigning and research tool.

Source: Low Pay Unit website: <http://www.lowpayunit.org.uk>

Appendix 2

European Social Charter

Facts about the 'Council of Europe Decency Threshold', taken directly from correspondence between the Scottish Low Pay Unit and the Secretariat of the European Social Charter:

I hope that what follows will convince you that the new method is sound and indeed a "simple but robust calculation" that can serve both as a goal and a tool of analysis for ordinary people and dedicated campaigners alike".

First, I should like to set a couple of facts straight:

- The European Social Charter was adopted in 1961 and entered into force in 1965. The Revised Charter was adopted in 1996 and entered into force in 1999. However, as you correctly note, there was no change to the wording of Article 4§1 on the right to a fair remuneration.
- The Charter is legally binding on all its Contracting Parties, not only the EU member states. As you know the Council of Europe currently has 44 member states of which 33 are bound by the Charter.
- The "Committee of Experts" is now named the European Committee of Social Rights (ECSR).
- The "sad reality" that women earn less than men is indeed addressed by the Charter and the Committee, namely in Article 4§3 of the Charter: the right of men and women to equal pay for work of equal value.
- What you term the decency threshold of 68% was not established in the text of the Charter, but followed from the interpretation by ECSR of Article 4§1. The term "Decency Threshold" was never a systematic part of the Committee's vocabulary, but I certainly see the use of such a term for communicating, campaigning and raising the awareness of the general public.
- The UK report is not to the "Council of Ministers" but to the Council of Europe and it was submitted by the UK Government in 2002. The Committee examined it in the autumn of 2002 and found that the statutory minimum wage in the UK was too low to be in conformity with Article 4§1 (see the conclusion in the attached document). *This refers to the Low Pay Unit article.*

Now a few general comments:

One of the problems with the 68% threshold was that in the Committee's usage of it, it was never as simple as this statement

implies, i.e. it was never a question of just verifying whether the lowest or minimum wage reached 68% of the gross average wage. The Committee attempted all along to take into account a host of factors such as taxes, welfare benefits, including housing and family allowances, etc., etc. Unfortunately the Committee had no methodology (and it probably does not exist!) for assessing the weight of the myriad of "compensatory factors" and in the end the Committee simply declared itself unable to assess whether States were in conformity with Article 4§1. To get out of this deadlock the Committee decided to develop a new method with the clear objective that it should put the Committee in a position to reach conclusions as to whether States comply with Article 4§1. Net wages were chosen by the Committee firstly because very simply what matters to the worker is what he actually receives in his pocket no what it says on the top of the pay slip. Any wage earner is familiar with the notions of "before tax" and "after tax". Moreover, in the Committee's view, States should not be punished for large wage differences measured "gross", if they pursue an efficient redistribution policy through a progressive tax system that serves to even out, at least to some extent, differences when looked at "net".

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Appendix 3

Article 4

Extract taken from The European Committee of Social Rights' Conclusion, Conclusions XVI-2 Volume 2, on the United Kingdom's conformity with Article 4 paragraph 1 of the European Social Charter (Revised), Council of Europe 1996.

Article 4 – Right to a Fair Remuneration

▪ Paragraph 1 – Adequate Remuneration

The committee notes from the United Kingdom report that a statutory minimum wage was introduced during the reference period (1997-2000) by the National Minimum Wage Act 1998 taking effect from 1 April 1999.

The report indicates that the national minimum wage applies to all workers, except young persons aged 16 and 17 and apprentices aged 18 (apprentices aged 19 or over are exempt for the first twelve months of the apprenticeship). Moreover, the minimum wage rate is differentiated according to age with the full rate being applied to workers aged 22 and over and a reduced, so-called “development rate” being applied to workers aged 18-21. According to the third report of the Low Pay Commission, the number of jobs paid below the minimum wage level was about 1.3 million in 1998. The Low Pay Commission's analysis shows that 70% of beneficiaries were women, around two-thirds of the jobs concerned were part-time, and there was an over-representation of ethnic minority employees, homeworkers and disabled persons.

The Committee notes that the original hourly rates of 3,60 British pounds (GBP, 5,45 euros) for workers aged 22 and over and 3,00 GBP (4,54 euros) for workers aged 18-21 were increased to 3,70 GBP (5,60 euros) and 3,20 GBP (4,84 euros) respectively from October 2000, and a further up rating was made in October 2001 (i.e. outside the reference period) to 4,10 GBP (6,21 euros) and 3,50 GBP (5,30 euros), respectively. According to the Low Pay Commission, the full rate minimum wage as of October 2000 represented only about 46% of median full-time earnings. The development rate would amount to only 39,8% of median full-time earnings. From Eurostat information, the Committee notes that the average monthly net wage of a single male worker in manufacturing was about 1 760 GBP (2 664 euros) in 1999. The gross full rate minimum wage in 1999. The gross full rate minimum

wage in 1999 calculated on a monthly basis would only amount to 36,4% of the net average.

While indicating that measures have been taken to reduce the tax burden on the lowest wages, the report does not contain the requested information on the value of the minimum wage as well as of the national average wage after deduction of any taxes and social security contributions. The Committee insists that this information be included in each report on this provision of the Charter. It also invites the Government to furnish detailed information on the effects of tax alleviation measures for single workers on the minimum wage and on any other measures (e.g. income and housing supplements) which improve the situation for this category.

Nevertheless, on the basis of the figures quoted above the Committee does not consider that the introduction of the statutory minimum wage has improved the situation sufficiently to alter its previous assessment. The full rate minimum wage and *a fortiori* the development rate fall manifestly short of the 60% threshold (net minimum wage as a share of the net average wage).

The Committee concludes that the situation in the United Kingdom is not in conformity with Article 4 paragraph 1 of the Charter as the minimum wage cannot be considered fair in the meaning of this provision.

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