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Notes on the proposal for a directive on adequate minimum wages: a German perspective

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Abstract

The proposal for a minimum wage directive has met with partly harsh criticism in many countries. Lack of EU legal competence is one of the main points contested. The present German Ministry of Labour and Social Security is in favour of the proposal seeing it as a means to strengthen welfare and peace in Europe and to improve overall wage levels. The same is true of the majority of German trade unions, whereas employers' associations are strictly against this piece of legislation. In legal literature strong opposition can be found as well as voices who support the proposal but recommend amendments with a view to the legal base problem.

Keywords: EU legal competence; Social partners; Collective bargaining on wage determination; Horizontal provisions.

1. Introduction.

A few years ago, the German Federal Ministry of Labour took the initiative to request the EU Commission for regulatory action at the European level to protect the minimum wage in the Member States. In a 2019 interview, the Federal Minister of Labour announced his willingness to promote regulatory action in this matter, which should be qualified as one of the focal points of the German EU Council Presidency in the second half of 2020. The gap between rich and poor countries of the Union has become more marked and this, consequently - as some scholars pointed out - risks undermining the project of a European Union. Only the strengthening of a social Europe could guarantee more certainty for welfare and peace. The idea is to set up a European minimum wage as a benchmark for wage levels in the individual countries and to encourage pressure, in Germany as well, that can positively

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influence the overall wage trends. It seems to me that the German minimum wage legislation has had a significant impact on the draft directive. The article provides an analysis and critique of this proposal, particularly form a German perspective.

2. Industrial relations in Germany.

With the adoption of the Federal Constitution on 23 April 1949 (*Grundgesetz*), a fundamental guarantee for the collective bargaining system was introduced in Article 9(3). This constitutional provision states that the right to form associations to safeguard and improve working and economic conditions is guaranteed to everyone and to every occupation or profession. It constitutes the cornerstone of the collective bargaining system[1] and marks a clear shift from the experience of the Nazi era, where an authoritarian system interfered very intrusively in the autonomy of industrial relations. A month before *Grundgesetz* came into force, the Collective Agreement Act was enacted, laying the foundations for the freedom of employers' associations and trade unions to conclude collective agreements regulating the establishment, contents and termination of employment relationships.[2] The interplay between the Constitution and this Act gave rise to a system of industrial relations which even nowadays established case law of the Constitutional Court (*Bundesverfassungsgericht*) is committed to protect from State and private interferences. This constitutional framework signals a clear preference for the autonomy of the social partners in regulating working conditions. Intervention by the law plays a secondary role.

3. The introduction of legal minimum wages in Germany.
3.1. Minimum wages through collective agreements universally applicable.

a) The Posted Workers Act (1996).

The history of the statutory minimum wage began in 1996 with the Posted Workers Act (*AEntG*), which states that workers of the construction industries posted from EU member states must be paid the minimum wage set up in the relevant collective agreement. With this Act, the legislator aimed to fight wage dumping[3] and prevent unfair competition within the internal market, especially through the exploitation of the competitive advantage of companies established in Member States with low wage standards. This is the background to § 1 *AEntG*, which states that the provisions of a universally applicable collective agreement in the construction sector also apply to an employment relationship between an employer seated abroad, and an employee performing work in the territorial scope of application of the respective collective agreement.

[1] Preis U., *Arbeitsrecht. Kollektives Arbeitsrecht*, Verlag Otto Schmidt, Köln, 2017, 22 ff.
[2] Extensive information on this law can be found in Herschel W., *Zur Entstehung des Tarifvertragsgesetzes*, in *Zeitschrift für Arbeitsrecht*, 1973, 184 ff.
[3] Däubler W., *Ein Antidumpinggesetz für die Bauwirtschaft,* in *Der Betrieb*, 1995, 726.

The rights according to the Act on the Position of Trade Union Representatives at the Workplace and the joint regulation legislation requires that the trade union has succeeded in reaching a collective agreement. Such organizations are the "established trade unions" in Sweden and given a privileged status in several aspects according to labour law. There is no requirement of representativeness, independency, or the like.

b) The legal minimum wage debate in the financial crisis (2005-2009).

At the beginning of the first decade of the new millennium, the German economy was in the midst of a crisis, characterised by declining economic growth, a particularly high public deficit, high unemployment, excessively high labour costs and a substantial deterioration in Germany's competitiveness in the international sphere. In this context, the 2002 Hartz reforms were launched.[4] Chancellor Schröder wanted to implement the so-called Agenda 2010.[5] This initiative fuelled a heated debate on the necessity of a legal minimum wage in view of a general wage cut. However, the idea of a legal minimum wage was not supported by the *Große Koalition*, which was formed at the end of 2005 and, on the advice of several economic experts, advocated the continuation of the minimum wage model based on the mechanism of sectorial collective agreements declared to be universally applicable. In this perspective, an amendment to the posting law was made in 2009.[6] While the legislation which has been in force since 1996 was only applicable to the construction sector, on this occasion, a significant extension of the sectors involved was established. The construction sector is compared to other service sectors where trade unions are weak due to the lack of an adequate number of members and, consequently, the wage level is very low.

The second novelty of the 2009 law is of a procedural nature. In view of the difficulties involved in the procedure for declaring collective agreements "universally applicable", the Act on posting establishes that the extension of a collective agreement can be achieved by governmental decree if there is a joint request from the organisations signing the collective agreement at national level. The recent experience shows that this innovation has been of great importance. Practically all minimum wages stipulated in collective agreements under the AEntG scheme have been given universal applicability under this new scheme.[7]

[4] Four laws were passed that implemented the ideas of the Hartz Commission report, on this see *Moderne Dienstleistungen am Arbeitsmarkt*, 2002.
[5] Agenda 2010 is described by Fuchs M., *Il ruolo del diritto del lavoro e della sicurezza sociale nella crisi economica: l'esperienza tedesca*, in *Giornale di Diritto del Lavoro e delle Relazioni Industriali*, 2013, 741.
[6] Löwisch M., *Die neue Mindestlohngesetzgebung*, in *RArbeit*, 2009, 215 ff..
[7] For a list of these minimum wages and their level *see*:
https://www.zoll.de/DE/Fachthemen/Arbeit/Mindestarbeitsbedingungen/Mindestlohn-AEntG-Lohnuntergrenze-AUeG/Branchen-Mindestlohn-Lohnuntergrenze/branchen-mindestlohn-lohnuntergrenze.html

4. The legal minimum wage (2015).
4.1. The stages of the process towards the legal minimum wage.

In view of the growth of a labour market segment offering only very low wages, which are increasingly being supplemented by unemployment benefit II (known as Hartz IV[8]), a consensus is beginning to form in the political debate that this situation must be remedied and that a full-time job must guarantee the minimum which is necessary to meet living needs. In implementation of the agreement on the formation of the Große Koalition, the law of 11 August 2014[9] introduced a legal minimum wage. This law consists of a package of laws (Tarifautonomiestärkungsgesetz), one of which, the Mindestlohngesetz (MiLoG), regulates the minimum wage.

4.2. The regulation of the legal minimum wage.[10]
a) The right to the minimum wage.

Paragraph 1(1) of the *MiLoG* states that every employee[11] is entitled to a wage that is at least equal to the minimum wage. Clause 2 of this provision quantifies the amount of the minimum wage at EUR 8.50 gross per working hour, as of 1 January 2015. Art. 4 of the Commission's proposal (see below c) establishes that the minimum wage can be adjusted by a government decree. The minimum wage has been subject to changes in the past years and as of 1 January 2021 it is set at €9.50 per hour. Clause 3 states that decrees issued under the *AEntG* and the *Arbeitnehmerüberlassungsgesetz* (AÜG)[12] (the Temporary Employment Act) take precedence over *MiLoG* regulations if the minimum wages set by these decrees are not below the legal minimum wage.

b) Documentation and information obligations.

It goes without saying that in sectors where low wages have been paid up to now, various loopholes are being attempted to circumvent the obligations imposed by the legislation. For

[8] Fuchs M., *Precariato e welfare. Il sistema tedesco*, in Lagala C. (a cura di), *Precariato e welfare in Europa*, 2007, 181 ff.
[9] Bundesgesetzblatt 2014 I, 1348.
[10] In academic studies there are numerous contributions on *MiLoG*, *see* among others Jöris H., von Steinau-Steinrück R., *Der gesetzliche Mindestlohn*, in *BB*, 2014, 2101 ff.; Spielberger M., Schilling A., *Das Gesetz zur Regelung eines allgemeinen Mindestlohns*, in *NJW*, 2014, 2899. For an extensive discussion of the law, *see* the paper by Corti M., *La nuova legge sul salario minimo in Germania: declino o rinascita della contrattazione collettiva?,* in *Diritti Lavori Mercati*, 2014, 111.
[11] The definition can be found in § 22 *MiLoG* and the notion includes all workers. Trainees are excluded if the apprenticeship is required by school or university regulations as part of education. Apprentices are also excluded because they are included in a special Act. Workers who have not reached the age of 18 do not get the minimum wage without having completed an apprenticeship. As for the long-term unemployed, the employer is exempted from paying the minimum wage for the first six months of the employment relationship.
[12] § 3a of the law requires a decree of the Ministry of Labour and Social Affairs to define minimum salaries on the proposal of the social partners operating in the temporary employment sector on a national basis. There is a decree of 1 April 2014 establishing minimum limits according to regional criteria.

this reason, the legislator has prescribed precise documentation requirements to enable authorities to monitor compliance with the *MiLoG*.[13]

c) Adjustments to the statutory minimum wage.

A large part of the regulations contained in the *MiLoG* is dedicated to the procedure for adjusting the statutory minimum wage. The law entrusts the task of adjustment to a specific Commission (*Mindestlohnkommission*), which operates on a permanent basis. The so-called *MiLoG* Commission consists of a chairman, six voting members and two members from academia with advisory status. The Federal Government appoints the voting members from employers' and employees' associations on the proposal of the confederations.[14] In the same way, the Federal Government appoints the chairman of the commission. The Commission has to decide every two years.

d) Sanctions.

Certainly, administrative sanctions are imposed for cases of violation of the obligations resulting from the law. Less serious cases are sanctioned with a fine of up to €30,000, while in serious cases the fine can be up to €500,000. It is also important the provision[15] imposing the exclusion of fined employers from participating in public competitions. This provision is dictated by the long-standing intention of regional (*Länder*) legislation to encourage participants in public competitions to comply with obligations arising from collective agreements.[16]

5. The proposal for a Directive from the angle of the German law.
5.1. The scope of application of the Directive.

Both the Directive (articles 1 and 2) and the *MiLoG* (§ 22) lay down the minimum wage for all workers. The question arises as to whether all the exceptions to the scope of application contained in § 22[17] are to be considered in accordance with article 2 of the Directive and whether they can be justified by legitimate and objective reasons. The exclusion of minors under the age of 18 without an apprenticeship seems doubtful; in this event, the idea of creating an incentive for vocational training could be a legitimate justification.

[13] *See* in particular § 17 *MiLoG*.
[14] § 5, comma 1 *MiLoG*.
[15] *See* § 19 *MiLoG*.
[16] *See* below V.4. a).
[17] *See* above IV. 2. a).

5.2. The promotion of collective bargaining on wage determination.

Article 4 of the proposed directive is designed to counteract the increasing decline in the contractual coverage rate. If this rate is below 70%, Member States must provide a framework of conditions favourable to bargaining, in particular an action plan. This provision requires implementing measures in Germany, as the coverage rate is around 44%.[18]

5.3. The chapter on statutory minimum wages.
a) The determination of the minimum wage.

Article 5 of the Directive contains a programme for determining the minimum wage. It consists of five postulates that must be taken into account when setting the appropriate minimum wage:

- the aim: to achieve decent living and working conditions, social cohesion and upward convergence (no. 1)
- a catalogue of criteria to be followed in determining the minimum wage (No 2)
- a reference to the methods used in the international context (No 3)
- regular updating of the minimum wage (No 4)
- establishment of consultative bodies.

From the point of view of the German lawmaker, minimum wage legislation is essentially based on a number of basic reasons[19] which are expressly mentioned in § 9(2) of the *MiLoG*: adequate minimum protection of workers, the guarantee of fair competition and compliance with the employment rate. With regard to the first criterion, the explanatory memorandum to the bill points out that collective bargaining is no longer able to impose a sufficient wage level in all sectors, i.e. to guarantee a wage level that, in connection with a full-time employment relationship, is suitable for meeting basic living needs without having to resort to state social benefits.[20] In 2015, the legislature introduced a minimum wage for the first time, setting a sum of €8.50 per working hour, taking into account the threshold that the Code of Civil Procedure stipulates as a minimum income exempt from seizure and making a slight upward adjustment.

b) Periodic updating of the minimum wage.

The criteria laid down in Article 5(2) and the guidelines, such as the ones commonly used at international level (No. 3), are not mentioned in the *MiLoG*. However, Article 9 of the *MiLoG*, in defining the procedure to be carried out by the minimum wage Commission (*hereinafter* "*MiLo* Commission") for the updating of the minimum wage, provides a selection

[18] Federal Statistical Office, *see:* https://www.destatis.de/DE/Themen/Arbeit/Arbeitsmarkt/Qualitaet-Arbeit/Dimension-5/tarifbindung-arbeitnehmer.html
[19] *See* BT-Drucks. 18/1558, 28.
[20] *Ibid.*, 26.

of criteria (adequate minimum protection, guarantee of fair competition, compliance with employment requirements)[21] which corresponds to the provisions of Article 5(1), (2) and (3). The latest biennial report of the *MiLo* Commission states in detail that these criteria have been fully implemented.[22] The introduction of the legal minimum wage may in itself generate a spill-over effect in low-wage sectors, a phenomenon also highlighted in the explanatory memorandum of the draft directive.[23] In particular, it was noted that from the introduction of the minimum wage until 2016, hourly wages in low-wage sectors increased by 14.1%, from 2016 to 2018 by 6.7%.[24] With regard to the *Keitz* index, which measures the *ratio* of the minimum wage to the median wage, the share stands at 46% in 2020. Against this backdrop, an intense discussion has recently opened up about the goal formulated in 2014, which is to guarantee a wage level that, in relation to a full-time employment relationship, is suitable for meeting one's basic living needs without having to resort to state social benefits. In the scientific and political debate, doubts about achieving this goal are growing[25] and the pressure for a significant rise of the minimum wage is increasing. Alongside some political parties and a large number of workers' unions, the Minister of Labour and Finance is proposing a minimum wage of €12 per hour. It is difficult to predict whether these demands will find the support of a parliamentary majority. Furthermore, it has to be noted that according to § 9, para. 4 of the *MiLoG*, the *MiLo* Commission is obliged to set the minimum wage following the lines of collective bargaining. There are quite a few sectors whose collective agreements do not reach the €12 level.[26]

c) Variations and additional remuneration.

With regard to Article 6 of the directive, which sets out certain variations in the minimum wage for specific groups of workers, it seems to me that the restrictions in current German law mentioned above can be justified by the pursuit of legitimate objectives.[27] It is very common in the systems of the Member States to allow a different wage for apprentices than for other workers. The reason for the special pay scheme for the long-term unemployed within the first six months, is to improve employment opportunities and § 22 para. 4 of the *MiLoG* allows the Government to derogate from this rule if necessary. With regard to additional remuneration, case law and labour law scholars show a divergence of views. With the introduction of the minimum wage, the legislator hoped that the minimum wage would be defined in accordance with the criteria developed by the case law of the Court of Justice.[28]

[21] *See* above IV.2.c).
[22] Cfr. Dritter Bericht zu den Auswirkungen des gesetzlichen Mindestlohns, 2020.
[23] *See*, COM (2020) 682 final, 4.
[24] Dritter Bericht nt. (22), 47.
[25] For recent researches *see* Dritter Bericht nt. (22), 78 ff..
[26] For an analysis of the various resulting problems *see* Pusch T., Schulten T., *Mindestlohn von 12 €: Auswirkungen und Perspektiven*, in *Wirtschaftsdienst*, 2019, 335 ff.
[27] Apprentices usually have a special wage regime. The exception for the long-term unemployed pursues the objective of a facilitated integration into the labour market and is subject to a review by the government on the success or failure of the provision.
[28] *See* Däubler W., *Der gesetzliche Mindestlohn – doch eine unendliche Geschichte?,* in *NJW*, 2014, 1924 (1926).

The Court had opted to recognise bonuses and supplements as components of the minimum wage, which do not alter the relationship between the worker's performance and the consideration received to the detriment of the worker.[29]

A ruling by the BAG,[30] in referring to a further decision of the Luxembourg Court[31], has opened up a debate in recent academic studies: the question has arisen as to whether the BAG ruling has paved the way for an orientation contrary to the case law of the ECJ.[32]

d) Involvement of the social partners.

The provision laid down in Article 7 is of extraordinary importance for the majority of the Member States. In countries where labour and/or constitutional law emphasises the role of the social partners in setting wage levels and the rate of coverage of collective bargaining is quite high, the legal minimum wage generates mistrust or even resistance on their part. In this regard, the example of the Nordic countries is particularly significant.[33]

The approach of §§ 4 ff. of the *MiLoG* is very much in line with the openness to the involvement of the social partners provided for in Article 7 of the proposal. It can be said that the determination of the legal minimum wage is *de jure* left to the social partners. They are also guaranteed a prominent role in the composition of the *MiLo* Commission, which adopts the principle of equal participation between employer and employee representatives who have the right to vote. In a way, it could be said that the composition of the Commission mirrors what happens in the field of collective bargaining. Even the choice of two experts in the *MiLo* Commission in an advisory capacity is attributed to the social partners. The fact that the law requires the *MiLo* Commission to turn to collective bargaining at a later stage is another element which reflects the tendency to create a certain parallelism between the outcome of collective bargaining and the setting of the minimum wage and reflects the criteria contained in Article 7. In addition, by sanctioning the prevalence of decrees issued by the Ministry under special laws (*AEntG*, *AÜG*), the legislator shows respect for the autonomy in collective bargaining of the collective parties involved: in fact, without the consent of the parties to collective agreement, the issue of these decrees is not authorised. That is why the respect for collective bargaining autonomy called for in Article 7 is certainly to be found in the German legislation.[34]

[29] *See* ECJ Case C-341/02, *Commission v. Federal Republic of Germany*, EU:C:2005:220; ECJ Case C-522/12, *Tevfik*, EU:C:2013:711.
[30] BAG 5 AZR 374/16 in *NZA*, 2017, 378.
[31] ECJ Case C-396/13, *Sähköalojen*, EU:C:2015:86.
[32] For detailed information *see* Franzen M., in *Erfurter Kommentar zum Arbeitsrecht*, 2021, § 1 MiLoG par. 11 ff..
[33] *See*. Eldring L., Alsos S., *European Minimum Wage: A Nordic Outlook*, 2012; Furâker B., Larsson B., *The European Trade Union Movement and the Issue of Statutory Minimum Wages*, in *Trade Unions Cooperation in Europe*, 2020, 75-107.
[34] *See*, Corti M., nt. (10), 22.

e) Effective access to legal minimum wages.

Article 8 intends to ensure compliance with minimum wage obligations. It contains a number of provisions aimed at: (a) imposing monitoring and inspections in the field, (b) providing guidance to the enforcement authorities and (c) providing workers with adequate information on the applicable legal minimum wages.

The first two provisions have the broad scope of the provisions of Articles 14 et seq. of the *MiLoG*, being addressed primarily to the customs authorities as the bodies responsible for the enforcement of the *MiLoG*. Article 12 of the *MiLoG* regulates the establishment of an office which is responsible for providing support to the *MiLo* Commission and guaranteeing workers and employers information on the subject of the minimum wage.[35] Information is particularly important, as the *MiLo* Commission pointed out in its latest report. The *MiLo* Commission has commissioned institutes to carry out representative surveys to find out how many people are fully aware of the exact amount of the minimum wage in their employment relationship. The surveys show that only 15% of the people employed in low-wage sectors know the exact amount, 40% have an approximate knowledge.[36] The *MiLo* Commission emphasises the function and importance of controls and points out that the inspections currently carried out by the competent customs authorities do not meet the necessary standards.[37]

5.4. Horizontal provisions.

a) Public procurement.

Article 9 takes its inspiration from some recent developments in German legislation, namely that of certain *Länder*, where the legislator aims to prevent foreign companies from taking advantage of the award of public contracts to pay wages below the level of local/regional collective bargaining. At first these attempts were unsuccessful because the public procurement laws conflicted with Directive 96/71.[38] The *Länder* then adapted these laws to meet the requirements of the law on the freedom to provide services.[39] To this day, 14 of the 16 *Länder* have enacted such laws, whereby all contractors (national and foreign) are obliged to respect regional/local collective agreements including minimum wages.[40] In

35 That office has been established at the Federal Institute for Occupational Safety and Health (*Bundesanstalt für Arbeitsschutz und Arbeitsmedizin*).
36 Dritter Bericht nt. (22), 57.
37 For an overview of controls *see* Dritter Bericht nt. (22), 60.
38 *See* Court of Justice, C-346/06 (Rüffert), EU:C:2008: 189 The same result (concerning a subcontractor) in the case 549/13 (Bundesdruckerei), EU:C:2014:2235.
39 ECJ C-115/14, *RegioPost*, EU:C:2015:760.
40 For an analysis of these laws and the problems they raised with regard to German and European law, *see* Faber M., *Die verfassungs- und europarechtliche Bewertung von Tariftreue- und Mindestentgeltregelungen in Landesvergabegesetzen*, in *Neue Zeitschrift für Verwaltungsrecht*, 2015, 257.

accordance with Art. 9, the other two *Länder* should legislate in a similar way. With regard to contracts commissioned by federal institutions, the Parliament should pass a special law.[41]

b) Monitoring and data collection.

Paragraph 9, section 4 of the *MiLoG* assigns the *MiLo* Commission the task to periodically monitor the effects of the minimum wage on the conditions of worker protection, on the functioning of competition and the employment rate in certain sectors and regions as well as on productivity. This monitoring activity makes it possible to collect a large amount of data that will form the basis for the compulsory biennial report. By doing so, it would not be difficult to fulfil the requirements of Article 10 with regard to the EU Commission.

c) The right to take legal action and the prohibition of victimization.

Article 11 of the draft directive pursues the objective (similar to other directives) of providing effective protection in the event of the infringement of rights concerning the legal minimum wage or the guarantee of the minimum wage laid down in collective agreements. In addition, the provision strengthens the position of the workers interested in the prohibition of the so-called victimisation. With regard to both measures, there is no need to transpose the provision into German labour law, since all the relevant protective regulations also apply to minimum wages and § 612a of the Civil Code contains a general prohibition of victimisation.

e) Penalties.

Paragraph 21 of the *MiLoG* contains detailed rules and establishes fines which are proportionate to the gravity of the breach of the obligations under the *MiLoG*.[42] The imposition of a fine results in the exclusion of the contractor from participating in a future public procurement procedure for an adequate period (§ 19 *MiLoG*). Consequently, a transposition of Article 12 into German law seems entirely superfluous.

6. The legal basis of the Directive.

Does the EU have the competence to intervene in the field of minimum wages by adopting a directive like the one at hand? This question is as crucial as it is controversial. The

[41] The total annual procurement amounts to €400 billion (=15% of GDP), of which 12% falls on the federal state. That is why the DGB (the roof association of workers) is calling for a federal law, see DGB position paper of 26 May 2020.
[42] For a quantitative documentation of fines imposed *see* Dritter Bericht nt. (22), 63.

EU Commission has identified the legal basis for this regulatory intervention in Articles 153(1)(b) and 153(2) TFEU, affirming full compliance with the limits imposed on EU action by Article 153(5) TFEU. The divergence of views emerged during the consultation phase of the directive leads to the assumption that Member States will have to deal with this issue during the final approval and may not be able to agree on it.

The question of regulatory competence would need a study proper. A few brief remarks in this regard will be adequate for the purposes of this contribution.[43] According to German labour law scholars the scope of the exclusion of remuneration in Art. 153 para. 5 TFEU is highly debated. Generally speaking, there are two different opinions on this matter.[44] Some labour scholars argue that the EU is precluded from regulating wages either directly or indirectly, while other scholars only allow indirect intervention. The debate so far has mainly focused on anti-discrimination rules and measures concerning wages. The second position seems to be supported by the case law of the Court of Justice.[45] According to the European Courts, the limitation of competence cannot be extended to all matters that have any connection with wages, at the risk of depriving certain sectors covered by Article 153(1) TFEU of a significant part of their content. Therefore, following the Court's opinion, a restrictive interpretation seems to be more satisfactory, considering that the exclusion of wages in Article 153(5) TFEU is justified by the fact that the determination of the level of wages falls within the collective bargaining autonomy of the social partners operating at national level, as well as within the competence of the Member States in this matter. This, in my view, is the case-law framework against which the legitimacy of the proposed directive must be assessed. And this assessment must be carried out in each case in close connection with the individual provisions. By way of example, reference is made to Article 4 of the directive, which refers neither directly nor indirectly to wages. The impression is that, in this respect, Article 153(5) TFEU does not stand in the way of the proposed directive, although some elements still require careful consideration.[46]

7. Final remarks.

It is doubtful whether the German government will continue to support the minimum wage project as it has been transposed into the proposal. This depends among other things on the outcome of the autumn elections and the composition of the new government. As far as the social partners are concerned, the employers' inter-sectorial organisation is strongly opposed to the directive,[47] whereas the DGB has shown significant openness in favour of the EU Commission's initiative.[48]

[43] *See* for a detailed review Sagan A., Witschen S., Schneider C., *Der Kommissionsvorschlag für angemessene Mindestlöhne in der Europäischen Union*, in *ZESAR*, 2021, 103. Thüsing G., Hüller-Brungs G., *Soziale Gerechtigkeit ultra vires*, in NZA 2021, 170. These authors firmly deny the competence oft he EU.
[44] *See* for a presentation of views Riesenhuber K., *Europäisches Arbeitsrecht*, De Gruyter, Berlin, 2009, 108.
[45] *See* ECJ, C-307/05, *Del Cerro Alonso*, EU:C:2007:509 par. 39-41. Confirmed by ECJ, C-268/06, *Impact*, EU:C:2008:223 par. 122-125 and ECJ, C-501/12, *Specht et al.,* EU:C:2014:2005, para. 33.
[46] For an argument in this direction see Sagan A., Witschen S., Schneider C., nt. (43).
[47] https://arbeitgeber.de/themen/europa-und-internationales/europaeischer-mind
[48] https://www.dgb.de/schwerpunkt/mindestlohn/hintergrund/mindestloehne

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