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All's well that ends well?
The Court's "saving" of the Adequate Minimum Wage Directive

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Abstract

The Grand Chamber of the Court of Justice of the European Union "saved" Directive (EU) 2022/2041 on adequate minimum wages from total annulment in its judgment of 11 November 2025 (C-19/23). The ruling clarifies the boundaries of the competence exclusions laid down in Article 153(5) TFEU concerning "pay" and the "right of association," by recalling and updating the test of direct interference developed in the Court's earlier case law. This article follows the Court's reasoning step by step, critically examining its arguments also in light of the Advocate General's Opinion, which had instead supported the full annulment of the Directive. It concludes by reflecting on the broader implications of the judgment for the future of European wage policy.

Keywords: Minimum Wage Directive; Principle of Conferral; Pay; Right of Association.

1. A turning point in EU wage policy: the context behind the Directive 2022/2041.

The Directive on adequate minimum wages in the European Union (AMWD)[1] came after a long discussion about the desirability of a European instrument aimed at coordinating national wage policies. It is arguably the most ambitious piece of social legislation introduced by the European Union in recent years, which carries high symbolic value. It marks a turning point in European wage and social policy. By embracing upward wage convergence across

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[1] Directive (EU) 2022/2041 of the European Parliament and of the Council of 19 October 2022 on adequate minimum wages in the European Union [2022] OJ L275/33.

EU Member States as the path toward inclusive and sustainable growth, it signals that the EU has moved away from the excesses of neo-liberalism that characterised the response to the Great Recession and the public debt crises, with their strong pressures toward wage moderation.

At the same time, the AMWD is also one of the most controversial recent instruments of social legislation. "Politically" supported by the European Pillar of Social Rights, which recognises the right to "adequate minimum wages" (Principle 6), it has been anchored within the Union's system of competences to the legal basis of Article 153(1)(b), concerning "working conditions". Despite this anchoring, the fact remained that the Union legislator was operating at the very edge of the competence gap laid down in Article 153(5) TFEU with regard to the topic of "pay".[2]

Indeed, the potential violation of the principle of conferral was promptly raised by one of the Member States that, from its inception, had been among the main opponents of the Directive: the Kingdom of Denmark. On 18 January 2023, Denmark filed an action for annulment, later supported by Sweden. The main claim is based on the argument that the Directive directly interferes with the determination of pay in the Member States and concerns the right of association - both areas excluded from the EU's competence under Article 153(5) TFEU - thus infringing the principle of conferral of powers. Secondly, according to the applicant, the Directive could not validly have been adopted on the basis of Article 153(1)(b), since it simultaneously pursues the equally important objective set out in Article 153(1)(f) TFEU concerning the "representation and collective defence of the interests of workers and employers", an area that requires the use of a special legislative procedure in which the Council acts unanimously. Alternatively, Article 4(1)(d) and Article 4(2) should be annulled as they interfere with wage levels and, in any case, address the right of association.

The action was decided by the Grand Chamber of the European Union Court of Justice on 11 November 2025,[3] after the Advocate General Opinion of 14 January 2025[4] (Hereinafter AG Opinion) supported the principal action for annulment, identifying a direct interference with the determination of pay levels in the Member States.[5]

The purpose of this contribution is to comment on the Court's decision. To this end, the main elements of the Directive at the centre of the action for annulment will first be outlined (§ 2). The Court's decision will then be analysed step by step, following the order of its reasoning. Therefore, the analysis will address the issue of the lack of competence in respect of "pay" (§ 3), and then consider that of freedom of association (§ 4). A separate remark will be devoted to the issue of the allegedly incorrect legal basis (§ 5). The article concludes with some reflections on the significance and implications of the decision for the future of European wage policy (§ 6).

[2] *See*, in this regard, one of the earliest comments on the legal basis of the proposal for a Directive by Di Federico G., *The Minimum Wages Directive Proposal and the External Limits of Art. 153 TFEU*, in *Italian Labour Law e-Journal*, 13, 2, 2020, 107-111.
[3] CJEU Grand Chamber, Case C-19/23, *Denmark v Parliament and Council*, 11 November 2025, EU:C:2025:865.
[4] Opinion of the Advocate General Emiliou, Case C-19/23, *Denmark v Parliament and Council*, 14 January 2025, EU:C:2025:11.
[5] Opinion of the Advocate General Emiliou, *ibidem*, para. 95.

2. The aims and contents of the Directive challenged in the annulment action.

The objective of the Directive, expressly stated at the outset (Article 1(1)), is to improve living and working conditions through the adequacy of minimum wages, in order to contribute to upward social convergence and reduce wage inequality.[6] To this end, the obligations laid down in the Directive are intended to intervene in the two typical channels for setting minimum wages: statutory law and collective bargaining. They aim to establish a framework for the adequacy of statutory minimum wages and support collective bargaining on wages, based on the assumption that where collective bargaining coverage is higher, wages tend to be more adequate.[7]

In pursuing these objectives, the Directive is explicit about what it does not intend to do: undermine the autonomy of the social partners (Article 1(2)) and the competence of Member States in setting the level of minimum wages, as well as their freedom to decide on the method for regulating minimum wages (whether statutory and/or through collective bargaining) (Article 1.3). Consistently, Member States are not required under the Directive to introduce either a statutory minimum wage or *erga omnes* extension mechanisms for collective agreements (Article 1.4). These clarifications appear clearly aimed at dispelling doubts and concerns about the real intentions of the European legislator.

Under Article 5, the Directive pursues the adequacy of statutory minimum wages mainly by imposing on Member States to establish the necessary procedures for the setting and updating of statutory minimum wages. More specifically, Member States are called, following their national practices, to predetermine stable and clear criteria (Article 5(1)), which must include at least the four criteria listed in the Directive: the purchasing power of statutory minimum wages, considering the cost of living; the general level and distribution of gross wages; the growth rate of gross wages; and labour productivity trends (Article 5(2)). These are rather common economic indicators used in minimum wage setting, the same listed by Article 3 of ILO Convention no. 131.[8]

The Directive does not specify the relative weight or internal composition of these criteria, leaving these aspects entirely to the Member States "taking into account their national socioeconomic conditions", including the possibility to add other criteria (Article 5(1)). What the Directive does specify, instead, is that the use of an automatic mechanism for indexation adjustments of statutory minimum wages is permitted; what is not permitted is that "the application of that mechanism leads to a decrease of the statutory minimum wage" (Article 5(3)).

The minimum procedural requirements also include an additional obligation to consider "indicative reference values" to guide Member States' self-assessment of the adequacy of their minimum wages (Article 5(4)). The Directive leaves open the possibility of using "indicative reference values commonly used at the international level and/or indicative

[6] For a comprehensive commentary on the objectives and content of the Directive *see:* Ratti L., Brumeshuber E., Pietrogiovanni V. (eds.), *The EU Directive on Adequate Minimum Wages: Context, commentary and trajectories*, Hart Publishing, Oxford, 2024.
[7] *See* Hayter S., Visser J. (eds), *Collective Agreements: Extending Labour Protection*, ILO, Geneva, 2018, 26.
[8] International Labour Organization, *Minimum Wage Fixing Convention No. 131*, 22 June 1970.

reference values used at national level". Among those commonly used internationally, the so-called Kaitz Index is mentioned as an example; it identifies the threshold of in-work poverty by relating the minimum wage to the national average and/or median wage (60% of the median gross wage and 50% of the average gross wage). It should be reiterated that this reference, according to the clear wording of the provision, is only illustrative and not prescriptive.

Decisions on the level of the minimum wage, as well as the criteria to be used for its updating and evaluation, require the involvement of social partners (Article 7) and a dedicated advisory body with the social partners' participation (Article 5(5)).

Finally, variations and deductions provided by the member states, which lead to a lower rate of statutory minimum wage for specific groups of workers, are admitted only if they are non-discriminatory, proportionate, and pursue a legitimate aim (Article 6).

The Directive's second major area of intervention concerns support for collective bargaining, as outlined in Article 4. Here too, the ultimate goal is still to ensure wage adequacy, in relation to which the facilitation of collective wage negotiations and the support for collective bargaining coverage are therefore instrumental. This applies not only in countries where wages are set exclusively by collective bargaining but also where they coexist with statutory minimum wage measures.

To expand collective bargaining coverage, Member States are required to adopt measures, always in consultation with social partners, that include at least promoting the development and strengthening of "the capacity of social partners to participate in collective bargaining on wage determination, particularly at sectoral or cross-sectoral levels"; encouraging "constructive, meaningful, and informed wage negotiations between social partners"; and to ensure free and effective wage bargaining, take measures "as appropriate" protecting workers and trade union representatives from discriminatory acts, as well as protecting trade unions and employer organizations participating or intending to participate in collective bargaining from any acts of mutual interference, particularly in their establishment, functioning, or administration (Article 4(1)).

The obligations for Member States become more stringent where collective bargaining coverage is below 80%. These countries must develop, by law following consultation with social partners or through a tripartite agreement, a framework of enabling conditions for collective bargaining. Moreover, they shall also establish an action plan to promote collective bargaining (Article 4(2)). Regarding specific initiatives that States must or may undertake, the Directive adds nothing further.

3. The boundaries of the 'pay' exclusion: the test of direct interference.

The main ground of the Danish action revolves around compliance with the principle of conferral set out in Article 5 of the Treaty on European Union (TEU), according to which the EU only acts within the limits of the competences conferred upon it by the Member States in the Treaties. In the present case, this requires a scrutiny of whether the legal basis

chosen by the EU legislator (Article 153(1)(b) on "working conditions") was in fact used to circumvent the competence gap laid down in Article 153(5) concerning "pay."

The assessment is carried out by the Court through its usual formulaic style of reasoning, that is to say, a schematic style based on standardised formulas and only minimally discursive[9]. Still consistent with its established practice, the Court takes care to respond to the Advocate General's main arguments, without ever citing him. Indeed, the Court generally prefers not to engage in a direct and unnecessary dispute with the Advocate General - whose Opinion is merely an independent legal advice - and thereby avoid creating the impression of internal conflict within the Union's highest judicial body. The AG's Opinion is mentioned only three times and only in passages where the Court agrees with it.

The reasoning moves from the Court well-known interpretation of the competence exclusion on pay. Namely: *Del Cerro Alonso* [10] and *Impact,*[11] with regard to the obligation on Member States to guarantee the application of the principle of non-discrimination, including remuneration, in favour of fixed-term workers under the Framework Agreement on Fixed-Term Work; *Bruno et al.,*[12] which concerned the similar principle of non-discrimination provided for by the Framework Agreement on Part-Time Work; *Specht et al.*[13] dealing with a general framework for equal treatment in employment and working conditions, including remuneration established by Directive 2000/78/EC.

In all the mentioned cases, the Court has maintained a consistent approach, stating that in order not to unduly affect the social policy objectives that fall within the Union's competence, the exception of competence must be interpreted restrictively, and therefore, it cannot be extended to any question involving any sort of link with pay.[14] In order to determine which questions related to pay are excluded from the Union's competence, the Court has developed and consistently applied the test of direct interference.[15]

Referring to its own case law (para. 68), the Court recalls that direct interference is clearly present in measures such as the equivalence (uniformization)[16] of all or some constituent parts of pay and/or pay levels or the setting of a minimum guaranteed EU wage.[17] The Union, therefore, may not harmonise the overall level of wages in the Member States, nor may it intervene in individual components of remuneration.[18]

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[9] Trklja A., McAuliffe K., *Formulaic metadiscursive signalling devices in judgments of the Court of Justice of the European Union: a new corpus-based model for studying discourse relations of texts*, in *International Journal of Speech Language and the Law*, 26, 1, 2019, 21.

[10] CJEU, *Del Cerro Alonso*, C-307/05, 13 September 2007, EU:C:2007:509.

[11] CJEU, *Impact*, C-268/06, 15 April 2008, EU:C:2008:223.

[12] CJEU, *Bruno et al.*, Joined cases C-395/08, C-396/08, 10 June 2010, EU:C:2010:329.

[13] CJEU, *Specht et al.*, Joined cases C-501/12 - C-506/12, C-540/12 and C-541/12, 19 June 2014, EU:C:2014:2005.

[14] CJEU, nt. (10), para. 41; CJEU, nt. (12), para. 37.

[15] In addition to the cases mentioned above, the test has more recently been taken up in: CJEU, *Glavna direktsia*, C-262/20, 24 February 2022, EU:C:2022:117, para 30.

[16] As noted by Countouris N., *Avoiding another 'Viking and Laval' moment– a critical analysis of the AG opinion on the Adequate Minimum Wage Directive, Case C-19/23*, in *European Labour Law Journal*, 16, 2, 2025, 319, the term "equivalence" is rendered more clearly in the French version ("uniformisation") and the Italian version ("uniformizzazione") of the judgments, suggesting that the Court "aims at prohibiting uniformity in the level of pay, and not just some simple procedural coordination".

[17] CJEU, nt. (11), para. 124; CJEU, nt. (12), para. 37; CJEU, nt. (13), para. 33; CJEU, nt. (15), 30.

[18] CJEU, nt. (10), para. 40; CJEU, nt. (12), para. 36; CJEU, nt. (11), para. 123.

Extending the Court's reasoning, direct interference in the determination of remuneration could also occur when the Union affects not only wage components but also the forms of remuneration (hourly, piecework, performance-related pay, payment in kind, etc.). Likewise, an aspect that will reappear in the present judgment, direct interference would arise if the Union were to interfere in the method (statutory law or collective bargaining) of minimum wage determination, for instance by imposing the introduction of a statutory minimum wage where none exists. It is not by chance that, as noted, the Directive expressly excludes such an obligation (Article 1(4)).

Having recalled the test of direct interference, the Court then proceeds to supplement and update it, taking into account the fact that, unlike the acts on which the test was originally forged, the contested measure is one whose very subject matter is "pay" (para. 69-70). The Court therefore clarifies that the closer or looser connection between the act under review and the issue of remuneration does not automatically exclude EU competence and is thus a neutral element for the purposes of the direct-interference test (para. 70). Accordingly, measures compatible with the competence exclusion are not only those which, as in the Court's previous case law, address aspects of remuneration in the context of instruments dealing with equal treatment in employment and working conditions. Thus, Directive 2022/2041, which relates directly to the matter of pay, may nevertheless be compatible with the competence exclusion laid down in Article 153(5).

This is perhaps the most significant passage of the judgment, as it implicitly, though without expressly mentioning it, disavows the main argument put forward by the Advocate General in support of annulment: a Directive that, from its very title, declares itself to be concerned with wages[19] and whose subject matter and end goal is the adequacy of wages[20] undoubtedly aims to regulate "pay", thereby conflicting with Article 153(5) TFEU.

The Court instead neutralises these aspects for the purpose of the direct-interference test. And not only that. The Court also reiterates what it had already stated in earlier case law, while providing further clarification: "measures which, in practice, have positive effects or repercussions on pay … [and] fully respect the diversity of the national practices of the Member States and the autonomy of the social partners" (para. 71) cannot be excluded *a priori* from the Union's competence. Otherwise, there would be a risk of severely limiting the objectives of social policy and, in particular, those relating to "working conditions", of which remuneration is an integral part (para. 72).

To summarise: a Directive whose main object of intervention concerns remuneration, and which may even affect wage levels, does not automatically fall within the competence gap.[21] It risks falling within this exclusion only if it contains measures that directly affect the autonomy of Member States and national social partners to determine pay levels and their constituent parts, or to choose the method for setting minimum wages.

[19] Opinion of the Advocate General Emiliou, nt. (4), para. 74.
[20] Opinion of the Advocate General Emiliou, *ibidem*, para 75.
[21] *See:* Kilpatrick C., Steiert M., *A little learning is a dangerous thing: AG Emiliou on the Adequate Minimum Wages Directive (C-19/23, Opinion of 14 January 2025)*, in *EUI LAW Working Paper*, 2, 2025, 9–10, who, in criticising the AG's argument, pointed out that the Equal Pay Directive (75/117) — whose main objective was to regulate pay, and which even had "pay" in its title — was never challenged for violating the competence exclusion, nor could it have been.

Having updated and clarified the contours of the direct interference test, and thus dispelled any possible misunderstanding as to the meaning to be attributed to its previous case law, the Court proceeds to apply the test to the contested provisions of the Directive, in particular Articles 4 and 5. Article 6, which lays down limits on variations and deductions that may reduce the minimum wage for certain categories of workers, is considered as well, since it was brought into the proceedings by the applicants' arguments (para. 41). However, its compatibility with the competence gap is swiftly dismissed, as it is quite evidently unrelated to any direct interference with pay. Indeed, the provision had not even been examined in the AG's Opinion.

In the following paragraphs we will then focus only on Articles 4 and 5.

3.1. The provisions supporting collective bargaining (Article 4).

Following the order of the Directive's legislative text, the first provisions considered by the Court are those in Article 4: paragraph 1, where the Directive requires Member States to adopt positive obligations designed to promote collective bargaining on wage-setting; and those in paragraph 2, which require the establishment of a framework of enabling conditions, also through a dedicated action plan, in Member States where collective-bargaining coverage is below 80%.

In the view of the Kingdom of Denmark and the AG,[22] by imposing positive obligations on Member States intended to promote collective bargaining, the Directive clearly restricts the Member States' choice as to the method of wage determination they may rely on. In other words, Article 4 requires intervention in the choice of sources of minimum-wage determination, which, even if they do not affect wage levels or their constituent elements, may nonetheless constitute direct interference in wage determination. Nor does it matter that the obligations are vague and expressed in uncertain terms, thereby operating only a limited form of harmonisation; they still amount to regulating pay and still constitute harmonisation, directly encroaching upon the lack of competence for matters covered by Article 153(5) TFEU.[23]

This is a highly strained reading of Article 4, one that finds no real correspondence in the content or objectives of the provision. The Court therefore has little difficulty in rebutting the argument. The Directive is, in fact, extremely careful not to interfere with Member States' choice of the method for setting minimum wages, whether through statutory law and/or collective bargaining (para. 78). This point is reiterated several times: "The Directive shall be without prejudice … as to the choice of the Member States to set statutory minimum wages, to promote access to minimum wage protection provided for in collective agreements, or both" (Article 1(3)); and "Nothing in this Directive shall be construed as imposing an obligation on any Member State … where wage formation is ensured exclusively via collective agreements, to introduce a statutory minimum wage" (Article 1(4)). Under the

[22] Opinion of the Advocate General Emiliou, nt. (4), para. 91.
[23] Opinion of the Advocate General Emiliou, *ibidem*, paras. 90-92.

AMWD, a Member State could even, in principle, decide to abolish statutory minimum wages altogether.[24]

Article 4 is no exception to the Directive's neutrality with respect to the methods of minimum wage setting chosen by the Member States. The provision, in fact, merely seeks to facilitate collective bargaining on wages and to increase its coverage, without imposing it. Nothing in this or in any other provision of the Directive aims to make collective bargaining the privileged method of wage determination or to interfere with its contents and therefore with the autonomy of social partners. In this sense, the Directive positions itself solely as *auxiliary* legislation (as opposed to *regulatory* legislation), establishing a framework for minimum wages to be determined or regulated at the national level by the social partners, in accordance with national practices.[25]

The Court is very clear in this sense when it observes that Article 4 "neither governs the content nor prescribes the result of collective bargaining" (para. 78). More specifically, the Directive does not intervene in the substance of wage negotiations, thereby avoiding any interference with wage levels and/or the constituent parts of wages. As for the outcome of the actions to be taken in relation to collective bargaining, the 80% coverage rate is not an obligation "as to the result to be achieved but, at most, obligations as to means" (para. 79). As recital 25 also clarifies, it should "only be construed as an indicator triggering the obligation to establish an action plan". Its non-attainment "does not therefore in itself constitute a breach of an obligation on that Member State" (para. 80). It follows that the 80% target does not force require Member States and social partners to adopt measures that would encroach upon their autonomy. The Directive, on the contrary, does not interfere with the actions to be undertaken to support collective wage bargaining, either in paragraph 1 or paragraph 2, which are left almost entirely to the autonomy of the Member States and the social partners.

To clarify a point not addressed by the Court, the only provisions containing any prescriptive requirements for Member States in Article 4 are those in points (c) and (d) of Article 4(1): namely, the adoption of measures protecting against acts of retaliation linked to the exercise of the right to collective bargaining, and the protection of the parties to collective bargaining from any acts of interference by each other or by their agents or members in their establishment, functioning or administration. These are not, however, prescriptions that interfere in any way, even indirectly, with wage regulation at the national level. They are simply support measures for collective bargaining, which, as noted above, fall squarely within EU competence.

[24] This conclusion is shared by Brameshuber E., *EU competence in the field of social policy, why the AG's opinion on the Adequate Minimum Wage Directive in C-19/23 (does not) matter(s)*, in *EU Law Live*, 31 January 2025.
[25] *See* Brameshuber E., *Constitutionalisation and Social Rights – A Fundamental Right to Adequate Minimum Wages?,* in Ratti L., Brumeshuber E., Pietrogiovanni V. (eds.), nt. (6), 132, who in this regard recalls Otto Kahn-Freund's distinction between auxiliary and regulatory legislation. In the same vein, Lo Faro A., *Promotion of collective bargaining on wage-setting (Article 4),* in Ratti L., Brumeshuber E., Pietrogiovanni V. (eds.), nt. (6), 185.

3.2. The procedure for setting adequate statutory minimum wages (Article 5).

The Court turns then to the provisions dedicated to statutory minimum wages.

Article 5(1), which imposes a general obligation on Member States to establish the necessary procedures for the setting and updating of statutory minimum wages, does not, in the Court's view, give rise to any issues. The obligations placed on Member States merely require that the procedures be based on clear and stable criteria, defined by Member States with full discretion and in accordance with their national practices (para. 89). This means, in practical terms, that they may choose whatever combination they prefer, assign the desired weight to the selected criteria, establish a formula, or proceed in a more empirical manner each time.

Having clarified this, the Court resumes its implicit dialogue with the Advocate General's Opinion, in order to exclude the idea that the provision establishes an individual right to an 'adequate' minimum wage (or to its adjustment). Such a right had been identified by the AG on the basis of the link drawn in recital 3 between the Directive and Article 31 of the Charter of Fundamental Rights of the European Union (CFREU), which provides that every worker has the right to "fair and just working conditions".[26]

According to the AG, the reference to the Charter provides the concept of adequacy that the criteria adopted by Member States under Article 5(1) "must" ensure. That supposed right to an adequate minimum wage would then be materialised, in the AG's view, through Article 12, which recognises a "right to redress" in cases of infringements of rights relating to statutory minimum wages.[27] The existence of such a right, as the AG maintains, would necessarily entail direct interference with national minimum wage levels, which would be bound to an adequacy objective.[28]

The Court's reply comes through two counterarguments.

The first is entirely straightforward, yet evidently overlooked by the AG: under Article 51(2) CFREU, the Charter cannot confer on the Union competences that are not already provided for in the Treaties[29] (para. 93). *A fortiori*, it cannot confer a competence, namely, to set adequate and decent minimum wages, that is expressly excluded by Article 153(5) TFEU. Any link between the criteria set out in Article 5 of the AMWD and Article 31 of the Charter must therefore be ruled out, as must the possibility of importing into the Directive an autonomous European concept of adequacy.

[26] Opinion of the Advocate General Emiliou, nt. (4), paras. 81–82. It is worth noting, however, that remuneration is not expressly mentioned in this provision. Only through interpretation has such a right been derived by some authors in connection with the notion of "dignity". According to Bogg A., *Art. 31: Fair and Just Working Conditions*, in Peers S., Hervey T., Kenner J., Ward A. (eds.), *The EU Charter of Fundamental Rights: A Commentary*, Hart, Oxford, 2014, 855–856, the concept of dignified working conditions can serve as a basis for a right to decent pay, ensuring a satisfactory standard of living for workers and their families, since pay is their principal means of subsistence. But even if the right to an adequate wage were to be brought within the scope of Article 31 of the Charter, it would certainly not amount to a right that is "mandatory, unconditional in nature and sufficient in itself," as noted by Brameshuber E., nt. (24).

[27] Opinion of the Advocate General Emiliou, nt. (4), para. 94.

[28] Opinion of the Advocate General Emiliou, nt. (4), paras. 80–82.

[29] Ward A., *Article 51: Field of Application*, in Peers S., Hervey T., Kenner J., Ward A. (eds.), nt. (26), 1415.

Secondly, the existence of an individual right to an adequate minimum wage is not confirmed but rather contradicted by Article 12 AMWD itself. The right to redress is, under that provision, subject to the existence of such rights in national law or in collective agreements (para. 91). Therefore, the right to redress cannot, in the first place, be invoked with respect to an alleged "adequate" minimum wage derived from EU law. Moreover, if a statutory minimum wage or applicable collective agreement is absent in a Member State, workers may have no right to a minimum wage at all, and Article 12 cannot remedy this situation.[30]

Extending the Court's reasoning beyond paragraph 1 of Article 5, no provision of the Directive specifies what level of minimum wage should be considered adequate [31]. A concept of 'adequacy' of wages does not translate into binding rules, and therefore into a right to an adequate minimum wage, even in the provisions of Article 5(4). Although it requires Member States to establish indicative reference values to guide their assessment of the adequacy of statutory minimum wages, expressly mentioning the threshold of adequacy set by the so-called Kaitz index (60% of the gross median wage and 50% of the gross average wage), this reference is merely a suggestion, given that Member States "may use" it. Indeed, the provision expressly allows Member States to rely exclusively on "indicative reference values used at national level".

Most importantly, the assessment is carried out and managed by the Member State, which retains full discretion in determining the significance of these values. This excludes, as the Court also notes, any possibility that these parameters could have an impact on the level of minimum wages. They are not, in fact, constituent elements of minimum wages under the Directive, but merely external assessment parameters (para. 99).

The obligation laid down in Article 5(4) therefore represents a purely procedural requirement, just like those in Article 5(5), concerning regular and timely updates of statutory minimum wages, and in Article 5(6), relating to the designation or establishment of one or more consultative bodies. As such, they do not produce any direct interference in the area precluded to the Union legislator, namely prescribing mandatory substantive elements for the Member States as regards the level of statutory minimum wages or constituent elements of those statutory minimum wages (paras. 99–100).

This passage is extremely important because it adds an element to the direct-interference test that serves to disprove, again without explicitly mentioning it, the AG's much broader version of the same test.[32] A test which, in the AG opinion, includes any attempt to regulate pay, including by setting the modalities or procedures for fixing the level of pay.[33]

This view was derived from an alleged intention of the drafters of the Union Treaties, who, according to the AG, would have sought to "exclude from the scope of Union action

[30] Laulom S., *Right to redress and protection against adverse treatment and consequences (Article 12),* in Ratti L., Brumeshuber E., Pietrogiovanni V. (eds.), nt. (6), 290.
[31] Sagan A., Schmidt A., *The procedure for setting adequate statutory minimum wages (Article 5),* in Ratti L., Brumeshuber E., Pietrogiovanni V. (eds.), nt. (6), 202-203.
[32] *See* N. Countouris, nt. (16), 320, who criticises the AG for resorting to "a novel and much broader test, a self-standing 'direct interference' test, that is then deployed to add to the pay exclusion 'procedures' for fixing the level of pay".
[33] Opinion of the Advocate General Emiliou, nt. (4), paras. 54 and 87.

measures that include the harmonisation of wage levels, but which are not limited to that".[34] An interpretation which, as shown by scholars' reconstruction of the *travaux préparatoires* of the Maastricht Treaty, finds no confirmation.[35]

Moreover, the AG supported his assumption with a parallel (and overly literal) reading of the Court's case law, placing emphasis on what the Court did not expressly state. More precisely, in analysing the *Impact* judgment, he claims that the Court's use of the conjunction "such as", preceding the list of actions that EU legislators cannot undertake because of the competence exclusion ("the equivalence of all or some of the constituent parts of pay and/or the level of pay in the Member States […]"), supposedly demonstrates that the Court opened the possibility of also including measures harmonising other aspects of Member States' wage-setting systems, including the modalities or procedures for determining pay levels.[36]

The Court's clarification in the judgment under comment - excluding that procedural requirements directly interfere with the pay exclusion - therefore functions as an authentic interpretation of its own case law, confirming that the AG inferred from the Court's "silences" something the Court had never intended to say.

As regards the parts of Article 5 considered thus far, they therefore preserve the full ability of Member States to determine wages freely, without directly interfering with wage regulation. Their objective is not to regulate wages, but to support their adequacy by prescribing a procedure for setting statutory minimum wages.[37] Something that, as the Court has confirmed, is consistent with the competence exclusion in the area of pay.

A different conclusion is reached by the Court with regard to paragraphs 2 and 3 of Article 5.

Article 5(2), by requiring Member States to adopt at least the four criteria listed as part of the procedures for the setting and updating of statutory minimum wages, has crossed into the realm of direct interference with wage regulation. Unlike the indicative reference values under paragraph 4, which - as noted above - operate as "external" elements for assessing minimum wages, the criteria under paragraph 2 are "requirements relating to the constituent elements of those wages, which has a direct effect on the level of those wages" (para. 95). Hence the Court's decision to annul paragraph 2 and, consistently, to annul the phrase in paragraph 1 referring to "including the elements referred to in paragraph 2" which, after requiring Member States to establish their criteria, pointed to the mandatory criteria in paragraph 2.

The Court's reasoning, however, suggests that the decision was far from straightforward. There are several considerations that could have supported a finding of compatibility of paragraph 2 with the competence exclusion. It is the Court itself (para. 95) that notes that, read together, paragraphs 1 and 2 of Article 5 show that the list of mandatory criteria is clearly not exhaustive. Member States may, in fact, add further criteria defined in accordance with national practices. They may also decide on the relative weight to assign to the various criteria, both those mandated by paragraph 2 and those freely added by the Member State.

[34] Opinion of the Advocate General Emiliou, nt. (4), para. 51.
[35] Kilpatrick C., Steiert M., nt. (21), 3-7.
[36] Opinion of the Advocate General Emiliou, nt. (4), para. 59.
[37] Brameshuber E., nt. (24), 4.

In addition to the Court's observations, it is highly plausible that the "internal composition" of the criteria may also be determined by Member States: e.g. the composition of the basket of goods used to calculate the cost of living, or the period taken into account when assessing wage growth.[38] Moreover, Member States could introduce additional criteria that typically promote wage moderation, such as the effects of minimum wages on employment and business competitiveness, and assign these criteria a higher relative weight than the mandatory ones, thereby neutralising their influence.[39] And if a Member State can effectively nullify the impact of these criteria, it becomes difficult to conclude that they necessarily constitute elements of the wage capable of having a direct impact on wage levels. Such an impact would arise only if the Member State chooses to allow it.

The Court's decision to partially annul paragraph 3 leaves instead no room for counterarguments.

This provision grants Member States the option of using "an automatic mechanism for indexation adjustments of statutory minimum wages, based on any appropriate criteria and in accordance with national laws and practices". So far, nothing problematic. Indeed, this provision appears entirely redundant, as it merely allows Member States to do what already falls within their exclusive competence under the division of competences with Brussels.

What, however, falls outside the Union's competence is the subsequent non-regression clause: "provided that the application of that mechanism does not lead to a decrease of the statutory minimum wage". Here, the provision is undoubtedly capable of directly affecting national choices regarding wage levels (para. 97). It is a merely potential, and, in practice, extremely rare, situation that an automatic wage-indexation mechanism would lead to a reduction in wages (for example, during periods of deflation). In fact, this has never occurred in any of the EU countries that have such a mechanism in place.[40] However, there is no doubt that the provision is capable of potentially affecting wage levels and is therefore outside the Union's competence (para. 98).

Following the examination of Articles 4 and 5 of the contested Directive, the Court concludes that only the sentence just mentioned in Article 5(3) and the entirety of Article 5(2) (including the reference to it in Article 5(1)) must be annulled, as they are capable of causing a direct interference in the determination of remuneration. Although the Court does not state this explicitly, the partial annulment of the Directive is possible under the severability test. According to the Court's case-law,[41] the partial annulment of an EU act is possible only if the elements whose annulment is sought can be severed from the remainder

[38] Sagan A., Schmidt A., nt. (31), 203.
[39] Menegatti E., *Why the Directive on Adequate Minimum Wages does fit within EU competence. A response to the Advocate General's opinion,* ETUI Policy Brief, April 2025, available at: https://www.etui.org/publications/why-directive-adequate-minimum-wages-does-fit-within-eu-competence (last accessed 14 December 2025).
[40] Müller T., Schulten T., *After Landmark EU Court Judgement: The EU Minimum Wages Directive Is Alive and Kicking,* in *Social Europe*, 20 November 2025, available at https://www.socialeurope.eu/after-landmark-eu-court-judgement-the-eu-minimum-wages-directive-is-alive-and-kicking (last accessed 9 December 2025).
[41] CJEU, *United Kingdom v Parliament and Council*, C-121/14, 12 November 2015, EU:C:2015:749, paragraphs 20–21; CJEU, *SolarWorld v Council*, C-204/16 P, 9 November 2017, EU:C:2017:838, paragraphs 36–37; CJEU, *Poland v Parliament and Council*, C-626/18, EU:C:2020:1000, paragraphs 28–29.

of the measure and if their annulment does not affect the substance and spirit of the act.[42] Which is evidently the case with the cuts made by the Court to AMWD.

4. The right of association under the lens of the direct-interference test.

Having concluded the analysis of interference with the issue of remuneration, the judgment turns to the examination of the other area of exclusive Member State competence that, according to the Danish applicants, would have been violated by the Directive. Namely, the right of association. The Court recalls the test of direct interference, applying it, so far as can be seen, for the first time to one of the other matters excluded from EU competence under Article 153(5), apart from pay.

The starting point of the inquiry remains the same: the exclusion of competence must be interpreted restrictively and therefore does not cover any measure having a link with the right of association, but only measures which amount to direct interference by EU law with that right or with its exercise (para. 116).Consistently, the Court, this time expressly quoting the AG's Opinion,[43] rejects the broad interpretation of the right of association advanced by the Kingdom of Denmark, which would relate it not only to the right of every worker and employer to join an organisation, but also to the inseparable right to participate freely in collective bargaining.

The Court agrees at the outset that there is a link between the right of association, which is a prerequisite for the exercise of the right to collective bargaining. However, collective bargaining cannot be regarded as an element inherent in the former, and therefore cannot be considered excluded from EU competences under Article 153(5) TFEU (para. 108). On the contrary, they are two clearly distinct rights.

This is already evident from the system of competences in social policy established by the TFEU: while competence in respect of the right of association is excluded by Article 153(5), the right to collective bargaining is clearly included within the broad formulation of the competence set out in Article 153(1)(f), concerning the "representation and collective defence of the interests of workers and employers, including co-determination". Moreover, Article 156, in outlining the Union's supporting, coordinating, and complementary competences in the field of social policy, expressly distinguishes the right of association from the right to collective bargaining between employers and workers (para. 110). A distinct reference to the right of association and the right to collective bargaining, is also provided by both the 1989 Community Charter of Fundamental Social Rights (Articles 11 and 12) and the CFREU (Articles 12 and 28) (para. 111).

In light of the constant and clear separation between the two rights in the Union's primary law, it was therefore not difficult for the Court to reject the applicant's argument (para. 114). The competence gap concerns, as the AG also acknowledged (para. 101), only the right of workers and employers to form and to join (or not to join) an organisation for the collective

[42] *See* Ratti L., *Out of the Shadows: The Court of Justice and the Limits of EU Law Competence on Determining Minimum Wages*, in *EU Law Live*, 17 - 21 November 2025, 15.
[43] Opinion of the Advocate General Emiliou, nt. (4), para. 107.

defence of their interests, as well as the possibility for that organisation to pursue its activities and operate without unjustified interference by the State (para. 112).

Having defined the scope of the competence gap regarding the right of association, and having excluded that it concerns matters falling instead within the right to collective bargaining, it is easy for the Court to conclude that none of the Directive's provisions, and in particular Article 4, interferes with the direct regulation of the right of workers and employers to freely establish and join (or not to join) an organisation (paras. 117–118).

Not even point (d) of Article 4(1), which was also the subject of Denmark's request for partial annulment. It is true that, at first sight, that provision appears to deal with matters falling within the right of association, as it introduces an obligation for Member States to adopt measures to protect trade unions and employers' organisations from any act of interference by the opposing party, precisely "in their establishment, operation or administration". However, as the Court also notes, both the provision and any national implementing measures do not entail any direct interference in the establishment, operation or administration of associations (para. 120); rather, they propose measures that may support the right to collective bargaining, which only indirectly touches upon the right of association (para. 121).

These measures, moreover, are left to the complete discretion of the Member States, since they are required to adopt measures only "as appropriate" and within the limits permitted by their national law and practices (para. 122).

Following the same line of reasoning, direct interference must be excluded *a fortiori* in relation to paragraph 2. The provision only seeks to increase the number of workers protected by collective agreements, through measures that, under the same provision, will be freely decided by Member States, in agreement with or at least after consultation of the social partners, and always in full respect for their autonomy. Nothing, therefore, suggests any interference with the right of association.

The Danish argument that, in order to have any real prospect of increasing collective bargaining coverage, the obligation laid down in that provision must necessarily aim at ensuring that a larger number of workers are covered by an agreement by joining a trade union (as summarised by the judgment at para. 47), appears entirely unfounded. Article 4(2) can in no way be interpreted as imposing such a solution, as the Court emphasised (para. 125). Moreover, such a solution does not even appear to be an appropriate or suitable means of achieving the objective of increasing collective bargaining coverage. Indeed, it does not feature in any of the industrial-relations systems of the Member States with the highest bargaining coverage. On the contrary, in almost all such systems, collective agreements apply regardless of whether workers are union members or not. The only measure that would certainly increase collective bargaining coverage would be the introduction of an extension mechanism. But this, as repeatedly emphasised, is not required by the Directive, because it would represent - as the Court points out - a clear violation of the autonomy of the social partners, in direct breach of Article 152 TFEU (para. 84), as well as a direct interference with the competence gap under Article 153(5).

Once it is established that Article 4, and in particular paragraph 1(d) and paragraph 2, do not directly regulate either remuneration or the right of association, the subsidiary request

for annulment submitted by Denmark and limited to those provisions must also be dismissed. As the Court notes, this request is based on the same grounds and arguments put forward in support of the request for full annulment and must therefore be rejected (paras. 142–143).

5. The second pleas in law: the adoption of the Directive on the wrong legal basis.

As a subsidiary claim to the request for annulment based on the violation of Article 153(5), the applicant Member State questions the correctness of the legal basis used by the EU legislator. More precisely, the applicant argues that, since the Directive seeks to promote collective bargaining on wage determination, it also pursues the social policy objective set out in Article 153(1)(f), namely the "representation and collective defence of the interests" of workers and employers; an objective which, in the context of the Directive, would carry the same weight and importance as the objective of wage adequacy linked to the legal basis actually used, Article 153(1)(b) ("working conditions"). A double legal basis would therefore have been required.

To fully understand how this objection links to a claim for annulment, it is necessary to recall briefly the CJEU's case law on the correct identification of the legal basis of an act. As reiterated in the judgment under comment (paras 132–133), the use of a double legal basis has been accepted only as a strict exception, namely when it is shown that an act simultaneously pursues multiple objectives or contains inseparably linked components, with none of them being secondary or indirect in relation to the other.[44] A recent example in the field of social policy is the Platform Work Directive, which relies on Article 153(1)(b) (working conditions) and Article 16(2) TFEU (data protection).

However, and this is where the request for annulment of the AMWD comes into play, if the two legal bases are incompatible because they entail different legislative procedures, as is the case for Article 153(1)(b) (ordinary procedure) and Article 153(1)(f) (special procedure), they cannot coexist in a single legislative act.[45]

The consequence would be that Directive 2022/2043 could not have been adopted in its current form; instead, it would have had to be divided into two separate acts - one dedicated to wage adequacy and another to support for collective bargaining - the latter requiring the ambitious and unrealistic unanimous vote of the Council.

This conclusion, however, is not acceptable, as the Court explains, expressly agreeing with the AG on this point.[46] In line with its well-established case law, the Court reiterates that if an examination of an act shows that it pursues a dual purpose or has two components, and one of them can be identified as the principal or predominant one, the act must be based on

[44] CJEU, *Parliament v Council*, C-130/10, EU:C:2012:472, paras 43–44; CJEU *Commission v Council (Antarctic MPAs),* joined case C-626/15 and C-659/16, 20 November 2018, EU:C:2018:925, paras 77–78.
[45] CJEU, T*he Queen v Secretary of State for Health, ex parte British American Tobacco (Investments) Ltd and Imperial Tobacco Ltd.*, Case C-491/01, 10 December 2002, EU:C:2002:741, and the precedents cited by the Court at para. 133: CJEU, *Commission v Council*, C-300/89, 11 June 1991, para. 21.
[46] Opinion of the Advocate General Emiliou, nt. (4), paras. 118-119.

a single legal basis. Namely, the one required by that principal or predominant purpose or component (para. 132).

In the case of the AMWD, a predominant legal basis is indeed identifiable, as the act pursues a primary and final objective - wage adequacy - and one instrumental to that objective, and therefore accessory - the expansion of collective bargaining coverage. The numerous references to collective bargaining contained in the AMWD should not be misleading. The adequacy of minimum wages, and thus "working conditions", is clearly the centre of gravity of the Directive, while support for representation and collective defence is merely instrumental.[47]

The legal basis has therefore been chosen consistently with the Union's objectives, except for paragraph 2 of Article 5 and a couple of sentences in paragraphs 1 and 3, which, as noted, fall entirely outside the Union's competences (paras 136–139).

6. Conclusions: all's well that ends well?

The Court of Justice finally appears to have written a generally positive ending to the long story of the complicated and turbulent relationship between the European Union and pay. A story which took a dramatic turn during the sovereign debt crisis, and, when everything finally seemed to be heading in the right direction with the Directive's adoption, was again shaken by the Danish action and, above all, by the tension created by the AG's unexpected Opinion.

By 'saving' the Directive, the Court partly dispels the clouds that were gathering over the future of European social policy.[48] Not without, however, making explicit all the Directive's inescapable limitations.

Let us proceed in order.

The judgment is important both for its "internal" effects, on the challenged Directive, and its "external" effects, on the future of social policy.

As for the former, Member States that are still lagging behind in transposition should now proceed with it. Moreover, those with collective bargaining coverage below 80% must adopt the action plans required by Article 4(2). And although a small part of the Directive has been annulled, this is not expected to change much, also for those countries that have already transposed it. The partial annulment, in fact, does not invalidate the transposing measures related to the annulled obligations of the Directive, since transposition measures always have an independent legal basis in national law, even when they were originally required by EU legislation. Admittedly, Member States that transposed the criteria in Article 5(2) could now

[47] Ratti L., *What is the Minimum Wage Directive really about? An analysis of Directive 2022/2041 on adequate minimum wages, its implications and objectives*, in *Diritti Lavori e Mercati*, 2, 2024, 349.

[48] As for the possible implications of an annulment of the directive on the future of the EU social policy see Countouris N., *The Adequate Minimum Wage Directive 2022/2041 before the Court of Justice*, in *International Union Rights*, 32, 2, 2025, 11 and 19, available at https://www.ictur.org/pdf/IUR_322_COUNTOURIS.pdf (last accessed 11 December 2025).

remove this part from their national measures, though this seems rather unrealistic.[49] As stressed above, under Article 5(2) Member States were free to customise the level of commitment to these criteria, even to the point of effectively neutralising them. It is therefore hard to imagine that they will take the trouble to revise decisions they made without coercion. For the same reason, even if the Member States that have yet to transpose the Directive were to decide not to consider the Article 5(2) criteria, this would not in itself frustrate the Directive's objectives.

The judgment is even more important for its "external" effect. Had the Court adopted the interpretative line advanced by the Kingdom of Denmark, and shared by the AG, this would inevitably have implied an expansion of the pay exclusion to cover every single substantive and procedural aspect of pay determination, including any attempt to regulate pay through modalities and procedures for its determination. Even more concerning would have been an expansion of the competence exclusion concerning the right of association, which, under the interpretation proposed by the applicant, would have covered any attempt at positive promotion of collective bargaining. From this perspective, the Court's judgment allows a more confident outlook towards the future of social policy, to the extent permitted by the current geopolitical situation.[50]

Another implicit message that seems to emerge from the Court's reasoning is that the Directive was a gamble; one that has proved partly fruitful, especially with regard to the AMWD's political objectives: drawing attention to issues of in-work poverty and wage policy; countering the populist narrative that portrays the EU as aligned with business elites; and demonstrating instead that the EU is indeed a social market economy attentive to the living and working conditions of its citizens. As for the objectives the EU legislator sought to achieve - namely, the upward convergence of minimum wages in the Union towards adequacy - the instrument has proved instead to be of limited usefulness. It is certainly true that some Member States undertook a "strong" transposition (Greece and Slovakia among the most proactive), in some cases even anticipating the Directive (e.g. Bulgaria, Croatia and Spain).[51] Yet a considerable group of countries (Austria, Croatia, Denmark, Finland, France, Germany, Ireland, Italy, Slovenia, Sweden) showed no genuine interest in the Directive's objectives, considering themselves already aligned or introducing only marginal adjustments. Another considerable number of countries have not yet transposed the Directive, and many of them have shown no enthusiasm, even using the AG's Opinion as an opportunity to delay transposition (Estonia, Luxembourg, the Netherlands, Poland).

[49] The same view is shared by Müller T., Schulten T., nt. (40), who also note that 11 of the 22 EU Member States with statutory minimum wages have ratified ILO Convention No. 131 on Minimum Wage Fixing, which requires signatories to take into account almost identical criteria when setting minimum wages.

[50] The optimistic view is shared by Ratti L., nt. (42), 17, who recognises that the by accommodating sufficient regulatory space for the Member States in the field of wage setting, the Court "consolidates the EU constitutional basis in the social field, leaving it possible to further unlocking its potential both through legislative action and judicial interpretation".

[51] For a complete overview of the transposition process: Müller T., *Here Comes the Sun: the Formal Transposition and Political Impact of the European Directive on Adequate Minimum Wages in the EU*, Report 2025.04 – ETUI, Brussels, 2025, available at: https://www.etui.org/publications/here-comes-sun (last accessed 14 December 2025).

In short, and approximately, some improvements have been made, especially regarding statutory minimum wage adequacy in certain Member States. The objective of harmonisation, through upward wage convergence, has instead largely failed. What has emerged, at least so far, is even greater fragmentation among the Member States, reinforcing the fact that wage policies remain the prerogative of Member States. This is even more evident after the Court's judgment which, in order to save (most of) the Directive, had to clarify what the Directive could not do: impose adequacy on minimum wages, whether statutory or, even more so, collectively agreed.

There would be a solution to this: an expansion of the Union's competences. The "pay" exclusion not only prevents any effective action on wage adequacy, but no longer makes sense at a time when the Union already has a strong coordination of economic policies (within the European Semester), a single currency and a single monetary policy for most Member States. Such an expansion of competences, however, appears entirely out of reach, certainly in the current historical–political context. It is sufficient to note that the European Parliament's most recent Resolution of 22 November 2023 on proposals to amend the Treaties, made no mention whatsoever of removing, in whole or in part, Article 153(5) TFEU, despite the Parliament's broader treaty reform ambitions.[52]

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[52] *See* European Parliament resolution of 22 November 2023 on proposals of the European Parliament for the amendment of the Treaties (2022/2051(INL)) (C/2024/4216), paragraphs 13-15.

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