

# Directive (EU) 2022/2041 on Adequate Minimum Wages: ECJ Judgment on its validity and implications from the national perspective of Spain

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1. The right to fair wages and sufficient remuneration for a decent standard of living and Directive (EU) 2022/2041 on adequate minimum wages in the European Union. 2. The Directive on adequate minimum wages at risk: underlying difficulties and legal controversy. 3. The Directive on adequate minimum wages under scrutiny by the European Court of Justice: still alive... and *kicking*? 4. Implications and national transposition in Spain. 5. Final remarks.

## Abstract

This paper addresses Directive (EU) 2022/2041 on adequate minimum wages in the European Union. Firstly, it stresses its general significance, as a milestone in EU social policy, which aims to strengthen the guarantees on the right to a fair and sufficient pay for a decent standard of living in every member state, by promoting collective bargaining on remunerations and adequate systems for fixing and updating minimum wages, but without imposing a uniform European minimum wage. Secondly, it comments on the Judgment of the European Court of Justice about this Directive (ECJ Judgment 11 November 2025, Case C-19/23), which largely confirms its validity, although it annuls some concrete aspects. Finally, it analyses the implications and transposition of the Directive from the national perspective of Spain, pointing to a moderate but not worthless impact.

**Keywords:** Minimum wage; Sufficient remuneration; Collective bargaining; Collective agreements; European Union.

## 1. The right to fair wages and sufficient remuneration for a decent standard of living and Directive (EU) 2022/2041 on adequate minimum wages in the European Union.

Directive (EU) 2022/2041 of the European Parliament and of the Council of 19 October 2022 on adequate minimum wages in the European Union is a significant milestone in the social policy of the European Union. It was adopted following the Strategic Agenda 2019-2024 approved by the European Council in 2019 and the Commission's European Pillar of

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Social Rights Action Plan,<sup>1</sup> as development of the European Pillar of Social Rights Chapter II (Fair working conditions), principle 6 (Wages), which states that “workers have the right to fair wages that provide for a decent standard of living”, and that “adequate minimum wages shall be ensured, in a way that provide for the satisfaction of the needs of the worker and his / her family in the light of national economic and social conditions”, so “in-work poverty shall be prevented”. Moreover, Directive 2022/2041 responds to previous calls by the European Parliament for a legal instrument to guarantee fair minimum wages in the EU, which should contribute to eliminating working poverty and ensure decent living conditions for all workers.<sup>2</sup>

The relevance of the Directive on minimum wages is of course connected to the importance of the substantive issue addressed, since the setting of guarantees on sufficient and adequate minimum remuneration is crucial in relation to the objectives of seeking a more equitable distribution of wealth, strengthening social cohesion and combating inequalities, poverty and exclusion, paying particular attention to situations of economic vulnerability and to the reality of the so-called “in-work poverty”,<sup>3</sup> in line with the United Nations Sustainable Sustainable Development Goals (SDGs) 2030 Agenda.<sup>4</sup>

The guarantee of a fair and sufficient remuneration to ensure a decent standard of living for workers is a “classical” social right, already recognised in the European Social Charter (Art. 4.1), surely subsumable in Art. 31 of the Charter of Fundamental Rights of the European Union on fair and equitable working conditions (although lacking a direct express reference), and already included in the 1989 Charter of Fundamental Social Rights of Workers of the European Community (Art. 5). Of course, it is also proclaimed as a constitutional right in some member states, as the Spanish Constitution of 1978 does (Art. 35.1).<sup>5</sup> However, it is probably one of the least firmly guaranteed social rights in practice, with the action of the national public authorities on the matter frequently being insufficient, so an EU Law instrument as Directive (EU) 2022/2041 is a major novelty with remarkable potential impact.

Moreover, leaving apart some other actions and provisions that have also had an impact on wages, but from a more specific or limited perspective (i.e., Directive 2008/94/EC on

<sup>1</sup> European Commission, *Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions. European Pillar of Social Rights Action Plan*, COM(2021) 102 final, 13.

<sup>2</sup> In particular, European Parliament Resolution on employment and social policies in the euro area of 10 October 2019, 2019/2111(INI).

<sup>3</sup> On the notions of “in-work poverty” or “working poor”, Calvo Gallego J., *Trabajadores pobres y pobreza de los ocupados: una primera aproximación*, in *Temas laborales*, 134, 2016, 63 ff. See also the various contributions collected in Calvo Gallego J., Gómez Álvarez Díaz R. (eds.), *Trabajadores pobres y pobreza en el trabajo. Concepto y evolución de la pobreza en la ocupación: el impacto de las últimas reformas legales*, Laborum, Murcia, 2017.

<sup>4</sup> For a more exhaustive analysis on the contents of Directive (EU) 2022/2041, see Álvarez Alonso D., *Salarios mínimos en la Unión Europea: propuesta de Directiva e implicaciones para España*, in *Revista del Ministerio de Trabajo y Economía Social*, 152, 2021, 33 ff.; Ratti L., *Minimum wage*, in Hiessl C. (ed.), *EU Labour Law. A Commentary*, Wolters Kluwer Law International, Alphen aan den Rijn, 2025, 858 ff. See also the contributions collected in Ratti L., Brameshuber E., Pietrogiovanni V. (eds.), *The EU Directive Adequate Minimum Wages: Context, Commentary and Trajectories*, Hart Publishing, Oxford, 2024.

<sup>5</sup> García Murcia J., *Derecho a una remuneración suficiente*, in Monereo Pérez J.L., Molina Navarrete C., Moreno Vida M.N. (eds.), *La Constitución socioeconómica de España*, Comares, Albolote, 2002, 1193 ff.

the protection of employees in the event of the insolvency of their employer), it is the first time that EU social policy has addressed the issue of remuneration so explicitly and with such a general scope, albeit in a somewhat indirect way. Because of this indirect form of regulating, some comments and reactions have criticised the inadequacy or even “vagueness” of this European text.<sup>6</sup> However, considering the context in which the Directive has been adopted, the disparate landscape of regulations on remunerations and minimum wages across Europe, the intrinsic controversial nature of the topic, and the limitations of the EU competences in this field, the merits of Directive (EU) 2022/2401 cannot be underestimated. Perhaps it could have been more ambitious (or very probably not), but, in any case, it involves a step forward in trying to ensure not just the existence of legal guaranties on minimum remuneration, but also their sufficiency, their adequacy, and even their transparency and predictability.

## **2. The Directive on adequate minimum wages at risk: underlying difficulties and legal controversy.**

Since the beginning, Directive (EU) 2022/2401 on adequate minimum wages has had to face a complex panorama of obstacles and difficulties. Firstly, the field of intervention is complicated because of the disparate landscape of the very diverse rules and factual situations concerning remunerations and minimum wages across the different member states of the EU.<sup>7</sup> There are countries where there is no legal minimum wage as such, and the guarantee of minimum sufficient remuneration is established exclusively through collective bargaining (Austria, Denmark, Finland, Italy and Sweden). In an intermediate area, Cyprus generally entrusts collective bargaining agreements for setting wage levels but also sets legal minimum wages for some categories of occupations characterized by low wages. On the other hand, in twenty-one member states there are national minimum wages established by mandatory normative provisions, which are generally applied to all employment relationships, although sometimes with some exceptions or nuances. Spain is included in this last group, and, lastly, Germany has moved to it since the introduction of a legal regulation on the minimum wage in 2015.<sup>8</sup>

Moreover, even within the group of countries which regulate statutory minimum wages there are huge differences on the type of legal instruments and rules used, on the concrete amount of the minimum wages afforded, on the methods for determination and update, and from the perspective of minimum wage virtuality in terms of sufficiency for decent living and effects on income distribution and prevention of poverty, which is additionally correlated with the diversity of socioeconomic contexts in the different countries. The range of variety

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<sup>6</sup> Loffredo A., Orlandini G., *La Propuesta de Directiva de la Unión Europea sobre el salario mínimo adecuado*, in *NET21*, 4, 2021, 1 ff.; Menegatti E., *Much ado about little: The Commission proposal for a Directive on adequate wages*, in *Italian Labour Law E-Journal*, 14, 1, 2021, 21 ff.

<sup>7</sup> Ratti L., nt. (4), 858 ff.

<sup>8</sup> Martínez Girón J., *La nueva Ley alemana reguladora del salario mínimo general: Comentario, estudio contextualizador y traducción castellana*, in *Revista General de Derecho del Trabajo y de la Seguridad Social*, 41, 2015.

of amounts goes from less than 750 euros in Bulgaria to more than 2500 euros in Luxembourg, with nine member states under the threshold of 1000 euros, seven member states (including Spain) in between 1000 and 1500 euros, and six countries in the level above 1500. Contextualising the national amounts of minimum wage in terms of relation to median gross earnings, the latest reliable data show that just in a very reduced number of countries minimum wages represent over 60% of median gross earnings, while in most of them (including Spain) minimum wage represents from 50% to 59% of median gross earnings (sometimes far from reaching the threshold of 60%), and in 4 EU countries the minimum wages were less than half of the median gross earnings.<sup>9</sup>

That context of diversity inspires and surely justifies the initiative for the European Union's intervention in the field of minimum wages. However, it also shows the complexity of the issue. With such a starting point, it is a challenge to establish standards that serve as a common framework in the field of minimum wages for so many and so different countries, making a contribution of added value at the European level to be seen at the same as valuable from the own perspective of each of the different member states, and trying equally to avoid excessive tensions with the various models of setting and guaranteeing remuneration in the diverse national practices, pretending to introduce some improvements, but without abruptly conflicting with the respective national idiosyncrasies.

From a sociopolitical perspective, the Directive has caused disparate reactions. Most trade union organisations (including the European Trade Union Confederation and the European Trade Union Institute) have maintained a position of support, even if expressing some criticism as they would stand for a more ambitious action aiming the upward convergence of minimum wages and the strengthening of collective bargaining in Europe. On the opposite side, some employers' associations have shown not much enthusiasm, reluctance or even opposition to the European regulation on minimum wages. Ahead, the Directive has been received with distrust or dislike by both employers' associations and trade unions too in those countries where there is not a statutory minimum wage and the guarantee of fair and sufficient remuneration is entirely entrusted to collective bargaining (especially Sweden and Denmark, but in part Italy too), since in these countries the social partners are vigorously defending their own area of autonomy in this area, strongly opposing the intervention of the public authorities on the matter. From that perspective, the minimum wages Directive tends to be perceived to some extent as an undesirable interference against national practices.<sup>10</sup>

So, not very surprisingly, Denmark challenged the validity of the Directive on minimum wages before the European Court of Justice (ECJ), with the support of Sweden too, pointing to a possible excess regarding the competences of the EU and the limitations established in the treaties concerning the European intervention on the regulation of wages and collective trade union association. Certainly, the possibilities for regulation of the European institutions

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<sup>9</sup> See Eurostat, *Minimum Wage Statistics*, available at the following link: [https://ec.europa.eu/eurostat/statistics-explained/index.php?title=Minimum\\_wage\\_statistics](https://ec.europa.eu/eurostat/statistics-explained/index.php?title=Minimum_wage_statistics) (last accessed on 20 November 2025). For a deeper analysis on the underlying panorama of diversity in the field of minimum wages, see Álvarez Alonso D., nt. (4), 33 ff.

<sup>10</sup> For an interesting and detailed overview of all these reactions, see Eurofound, *Minimum wages in 2021: Annual review, Minimum wages in the EU series*, Publications Office of the European Union, Luxembourg, 2021, 42 ff. For a broader comment on the matter, see Álvarez Alonso D., nt. (4), 33 ff.

in the field of minimum wages are affected by some restrictions on the matter which emerge as a legal obstacle.<sup>11</sup> Indeed, with the aim of safeguarding the national idiosyncrasies and practices of the member states in the very sensitive field of trade union association, collective bargaining and wages from the interference of European action, Article 153(5) of the Treaty on the Functioning of the EU (TFEU) excludes remuneration, the right of association and the right to strike from the competences of the Union. Moreover, it is somewhat controversial the extent to what art. 153(1)(b) TFEU, referred to the broad category of “working conditions”, provides enough and adequate legal base for adopting a directive on minimum wages and collective bargaining on remunerations. Precisely because of these underlying limitations, Directive (EU) 2022/2041 had to “navigate between Scylla and Charybdis”, among the peril of including too sharp contents that might exceed the sphere of competence of the EU, and the risk of remaining too vague. Hence, it regulates on minimum wages and collective bargaining in a very cautious and indirect way, trying to respect (and somehow avoid) the mentioned restrictions, but giving as a result a legal provision which has been criticized for its ambiguity or lack of ambition and substantial content too.

Anyhow, in the procedure initiated by Denmark against its validity, the Opinion of Advocate General concluded in fact that Directive (EU) 2022/2041 on adequate minimum wages in the European Union should be considered incompatible with Article 153(5) TFEU and thus annulated in full.<sup>12</sup> Consequently, the virtuality of the whole Directive has been at stake, under the “sword of Damocles” of an eventual invalidation due to reasons concerning the competences and legal base for the adoption of such an instrument by the European Union. However, the European Court of Justice finally “saved” Directive (EU) 2022/2041, confirming the validity of most of it, and just partially annulling some concrete provisions, as commented under next section.

### 3. The Directive on adequate minimum wages under scrutiny by the European Court of Justice: still alive... and *kicking*?

The ECJ Judgment of 11<sup>th</sup> November 2025, *Kingdom of Denmark v. European Parliament/Council of the European Union (Adequate minimum wages)*, Case C-19/23, has confirmed the general validity of Directive (EU) 2022/2041 on adequate minimum wages in the European Union, ruling that this legal provision has been legitimately adopted within the framework of competences of the EU according to the founding treaties, and, in general terms, with adequate legal base and within respect to the restrictions of EU intervention on remunerations and trade union association established in art. 153(5) TFEU. Nevertheless, it considers contrary to those limits and consequently annuls just some specific parts of some concrete articles of the Directive: a) “the part of the sentence ‘including the elements referred to in paragraph 2’ in the fifth sentence of Article 5(1)”, b) “Article 5(2) of that directive”,

<sup>11</sup> 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 ff.

<sup>12</sup> Opinion of Advocate General Emiliou delivered on 14 January 2025, Case C-19/23, *Kingdom of Denmark v. European Parliament/ Council of the European Union (Adequate minimum wages)*.



and c) “the part of the sentence ‘provided that the application of that mechanism does not lead to a decrease of the statutory minimum wage’ in Article 5(3) of that directive”.

The Court holds that the mentioned restrictions to EU competence established in the Treaties do not prevent every kind of action or intervention somehow connected to remunerations or to the right to trade union association, nor do they impede any measure which, in practice, would have effects or repercussions on the level of pay. Otherwise, some competences conferred to the European Union in the area of working conditions, under Article 153(1) TFEU, would be emptied of content or deprived of much of their substance.<sup>13</sup> Moreover, the court emphasises that “the ability of the EU legislature to achieve the aims of social policy, as set out in the first paragraph of Article 151 TFEU, and, more generally, to give concrete expression to the social dimension of integration within the Union would be seriously compromised if that legislature were prevented from adopting measures which, in practice, have positive effects or repercussions on the level of pay, and even if, to that end, such measures fully respected the diversity of the national practices of the Member States and the autonomy of the social partners”. Hence, the exclusion of competence applies only to direct interference by EU law in the determination of pay and in the right of association. But collateral repercussions are not precluded, and, particularly important, nor is indirect normative action on the matter. So, it is possible to regulate in fact on the topic, but with that particular indirect approach or technique aiming to grant respect to national practices of the member states and to the autonomy of the social partners, as Directive 2022/2041 on adequate minimum wages actually does.

Furthermore, the ECJ totally validates the contents of the Directive related to collective bargaining, included in its Article 4, that lays down requirements on the adoption of specific measures for the purpose of promoting collective bargaining on wage-setting.<sup>14</sup> More specifically, it is required that Member States in which the collective bargaining coverage rate is less than a threshold of 80% are to provide for a framework of enabling conditions for collective bargaining either by “law” after consulting the social partners or by “agreement” with them, and should draw up an “action plan” setting out a clear timeline and “concrete measures” to progressively increase the rate of collective bargaining coverage, to be reviewed regularly, made public and notified to the Commission. It is to be highlighted that this is the most explicit and substantial EU law intervention in the field of collective bargaining so far, involving a certainly significant milestone in European social policy. However, that regulation has not been considered as a direct interference of the EU institutions contrary to the restrictions to intervention in the areas of remuneration and right to association of Article 153(5) TFEU. There is no such a direct interference, as those provisions do not impose a specific model of collective bargaining or wage-setting, they do not involve any preferences, conditions or concrete obligations directly affecting workers’ or employers’ right of association, and they explicitly abide respect for national practices and for the autonomy of the social partners.

<sup>13</sup> As previously pointed in ECJ 13 September 2007, *Del Cerro Alonso*, C-307/05, ECJ 15 April 2008, *Impact*, C-268/06, and ECJ 24 February 2022, *Glavna direkcija Pozharna bezopasnost i zashtita na naselenieto*, C-262/20.

<sup>14</sup> For an analysis on those contents of the Directive, see Lo Faro A., *Promotion of Collective Bargaining on Wage-Setting*, in Ratti L., Brameshuber E., Pietrogiovanni V. (eds.), nt. (4), 181 ff.

Though, the Judgment in fact annuls some contents of the Directive for effectively deeming them as direct interference on wage-setting regulation, in the way prevented by Article 153(5). Firstly, it annuls a part of Article 5(1) and Article 5(2), regarding the listing of socioeconomic criteria to be considered by Member States with statutory minimum wages when setting and updating those wages. Those criteria originally set by the Directive were: the purchasing power of statutory minimum wages, taking into account the cost of living; the general level of wages and their distribution; the growth rate of wages, and long-term national productivity levels and developments. Hence, as this has been annulled, the Member States are not obliged to follow exactly those criteria. Although some commentators have considered this of minor importance,<sup>15</sup> it represents indeed a significant loss to the substantial content of the Directive concerning the building of a European notion of “minimum wage adequacy” and the aims of ensuring objectivity and promoting convergence in the fixation of minimum wages across Europe. Nevertheless, it should be outlined that, conversely, other significant provisions on minimum wage adequacy still stand in force. Namely, Article 5(4), which establishes that Member States shall use indicative reference values to guide their assessment of adequacy of statutory minimum wages, and, to that end, they may use indicative reference values commonly used at international level such as 60 % of the gross median wage and 50 % of the gross average wage, and/or indicative reference values used at national level.

Hence, certainly, the invalidation of the list of fixation and update criteria somewhat hampers but does not absolutely eliminate the virtuality of the Directive regarding the issue of minimum wage adequacy. In addition, for those countries that are part to the European Social Charter and its enforcement by the European Committee of Social Rights, as it is the case of Spain, the loopholes of the supranational standards on the adequacy of minimum wages that EU Directive 2022/2041 may leave behind should be somehow covered by paying attention to the very substantial criteria on the matter coming from that other framework of the Council of Europe, which has been especially prolific on the topic.<sup>16</sup>

Secondly, the Judgment annuls a part of Article 5(3), with very concrete reference to the rule that prevented a downward revision of minimum wages when their update is automatically indexed (for instance, to the evolution of inflation or consumer price rates). Such prevention is consequently eliminated, this just meaning that the member states are entirely free to decide on the matter in one way or another. Nevertheless, this indeed deserves to be regarded as an aspect of minor importance compared with the fact that other core provisions on minimum wage update are still standing. Namely, Article 5(5), which requires regular and timely updates of statutory minimum wages that shall take place at least every two years or, for Member States which use an automatic indexation mechanism, at least every four years.

In conclusion, the ECJ Judgment provides a broad support to Directive (EU) 2022/2041 on adequate minimum wages, and to its particular way of indirectly addressing issues that fall

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<sup>15</sup> Molina Navarrete C., *El suelo salarial no solo debe ser mínimo, sino adecuado para una vida digna ¿qué acaba de decir el TJUE al respecto?*, in *Briefs AEDTSS*, 110, 2025, available at <https://www.aedtss.com/el-suelo-salarial-no-solo-debe-ser-minimo-sino-adecuado-para-una-vida-digna-que-acaba-de-decir-el-tjue-al-respecto/>.

<sup>16</sup> Molina Navarrete C., *ibidem*.

within the sensitive area of payment and collective bargaining. Nonetheless, it annuls some aspects of the Directive, although not core ones. Concretely, the invalidation of the mandatory list of objective criteria for the fixation or update of minimum wages involves a certain reduction of its virtuality, but not a major loss of significance. Most of the Directive and of its substantial content and potential subsist. Moreover, the ECJ Judgment of 11<sup>th</sup> November 2025, *Kingdom of Denmark v. European Parliament/Council of the European Union (Adequate minimum wages)*, Case C-19/23, is obviously important considering the Directive on adequate minimum wages, but its relevance transcends from this. In fact, the provided narrow interpretation of ECJ on the limitations under Article 153(5) TFEU to European competences in areas connecting to remuneration or to the right to association opens new and wider possibilities and perspectives for EU Law action in the field of social policy, employment and working conditions, with particular regard to collective bargaining.

#### 4. Implications and national transposition in Spain.

Although the transposition deadline was 15/11/2024, Spain has not adopted concrete new statutory provisions expressly and specifically aiming the transposition of Directive (EU) 2022/2041 on adequate minimum wages to the national legal system so far. Spain has communicated as transposition measures diverse legal texts that, in most cases, were preexisting to the adoption of the Directive.<sup>17</sup> This is probably due to the assumption that the Spanish legal system already complied with most of the obligations deriving from the Directive, so explicit transposition or legal amendments would not be strictly necessary.

In general terms, this assumption might be right but needs to be nuanced. Certainly, the Directive on adequate minimum wages does not entail disruptive or revolutionary implications for the regulation and setting of the minimum wage in Spain, nor does it require a particularly arduous effort for its proper transposition. Given that the EU's intervention on minimum wages is designed with a very cautious approach, through indirect formulas of action and with strict respect for the national legislation and practices of the Member States, it can be said that, overall, the current state of affairs regarding the minimum wage in Spain is not only in line with the orientations laid down as common minimum at the EU level, but surely involves a higher or more favourable standard.<sup>18</sup>

From a strictly legal point of view, there are very few aspects where a clear non-conformity with the contents of the Directive can be detected. The most notorious is the absence of the required specific consultative body to advise the competent authorities on matters related to the legal minimum wage referred to in Article 5, so it would be necessary to create it or, at

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<sup>17</sup> See National transposition measures communicated by the Member States concerning Directive (EU) 2022/2041 of the European Parliament and of the Council of 19 October 2022 on adequate minimum wages in the European Union, PE/28/2022/REV/1, available at the following link: <https://eur-lex.europa.eu/legal-content/EN/NIM/?uri=CELEX:32022L2041>.

<sup>18</sup> On the legal regime of the minimum wage in Spain, García-Perrote Escartín I., *El salario mínimo interprofesional*, in De La Villa Gil L.E. (ed.), *Estudios sobre el salario*, Acarl, Madrid, 1993, 303 ff.; Pérez Del Prado D., *Artículo 27. Salario mínimo interprofesional*, in Cruz Villalón J., García-Perrote Escartín I., Goerlich Peset J.M., Mercader Uguina J. (eds.), *Comentarios al Estatuto de los Trabajadores*, Lex Nova, Madrid, 2011, 289 ff.



least, to attribute this function to other already existing ones (for instance, the national Economic and Social Council). In 2021, the Ministry of Labour created an Advisory Commission for the Analysis of the Minimum Wage, composed by 12 different experts including two appointed by the most representative trade unions, with the purpose of advising on the update and successive increase of the minimum wage amount aiming convergence towards adequacy and sufficiency standards provided for by supranational institutions and instruments. Since 2021, the Commission of experts has delivered three reports on the minimum wage.<sup>19</sup> However, this Commission still moves in the area of informal practices, without formalisation or institutionalisation as a permanent body supported by a consolidated legal framework. It might nevertheless represent at least an antecedent regarding the advisory bodies referred to in Article 5(6) of Directive (EU) 2022/2041.

Secondly, there was some discrepancy between the parameters and criteria for setting and updating the minimum wage set out in Spanish legislation (Article 27.1 of the Workers' Statute) and those established in article 5(2) of the Directive. That dissonance, even if just partial, would have demanded a not extremely complicated amendment of Article 27.1 of the Workers' Statute for better adjustment to the criteria laid down in the Directive. However, Article 5(2) is precisely one of the concrete parts of the Directive annulled in the ECJ Judgment of 11<sup>th</sup> November 2025, *Kingdom of Denmark v. European Parliament/ Council of the European Union (Adequate minimum wages)*, Case C-19/23, so any concern on lack of adequate transposition in this regard has vanished.<sup>20</sup>

Nevertheless, the reform of Spanish legislation (Article 27.1 of the Workers' Statute) could be convenient to comply with the provision of Article 5(4) of the Directive, according to which Member States “shall use indicative reference values to guide their assessment of adequacy of statutory minimum wages”, suggesting (although not imposing) the use to that end of “indicative reference values commonly used at international level” such as 60 % of the gross median wage (the so-called *Kaitz Index*) and 50 % of the gross average wage, and/or indicative reference values used at national level. It is important to note that, at least in countries which are part of the Council of Europe and of the European Social Charter, those reference values frequently employed at the international level indirectly referred to should probably include the orientations provided from this other supranational framework. These point to the standard of 60% of the average wage, which is by the way higher than the ones explicitly mentioned in the EU Directive. This later reference has already been used in Spain in the prior consultations and in the subsequent governmental determination and update of the national minimum wage since 2019, acting as a future target to be gradually reached by successive annual increase of the minimum wage amount. Nevertheless, it has been somehow regarded more as a criterion of political guidance than as a technically formalized standard.

<sup>19</sup> See Comisión Asesora Para El Análisis Del SMI, *III Informe de la Comisión Asesora para el Análisis del SMI*, 2025, <https://www.lamoncloa.gob.es/serviciosdeprensa/notasprensa/trabajo14/Documents/2025/150125-III-Informe-Expertos-SMI.pdf>.

<sup>20</sup> Llopart Bennàssar M., *La esperada revisión de la Directiva (UE) 2022/2041, sobre unos salarios mínimos adecuados en la UE, por parte del Tribunal de Justicia de la UE*, in *Briefs AEDTSS*, 113, 2025, <https://www.aedtss.com/la-esperada-revision-de-la-directiva-ue-2022-2041-sobre-unos-salarios-minimos-adecuados-en-la-ue-por-parte-del-tribunal-de-justicia-de-la-ue/>.

The Directive on minimum wages could be an incentive for legal formalization of these and/or other criteria on the sufficiency and adequacy of the minimum wage.

Besides, in Spain, the setting and updating of the minimum wage has traditionally been considered as a prerogative of the Government, even though prior consultation with the social partners must be carried out and the criteria of Article 27.1 of the Workers' Statute are to be mandatorily considered. Anyhow, these criteria are established in scarcely precise and binding terms, leaving a wide margin of discretion. In contrast, the EU Directive seems to aspire to a more objectified and formalised system, characterised by higher transparency and predictability, as underlined in the Explanatory Memorandum of the Proposal for the adoption of the Directive on minimum wages, in the recitals and in other preparatory documents. It is true that Member States are left broad freedom to advance more or less intensively along this line, but it is clear that this would be the path pointed by the Directive, to which the Spanish practice might need further adaptation.

On the other hand, the provisions of Directive (EU) 2022/2041 on collective bargaining and on its coverage rate (Art. 4) are certainly not excessively incisive or concrete. In an overall assessment, the Spanish legal framework and the national practices regarding collective bargaining on remunerations seem to be consistent enough to meet the standards provided for in the Directive. Anyhow, some action on the matter would probably be necessary. In fact, the only innovation effectively adopted so far in Spain under direct influence of the Directive is precisely related to the statistical information on the collective bargaining coverage rate. As it is known, the measurement of collective bargaining coverage rate is globally quite difficult and controversial. Often, there are no clear, transparent and fully reliable official data, but just some OECD or other actors' different estimations, somewhat subject to discussion.<sup>21</sup> That used to be the case in Spain too. Hence, surely in the light of the provisions of Directive (EU) 2022/2041 concerning collective bargaining coverage rate and about monitoring and data collection on the matter [Articles 4(2) and 10], the Spanish Labour statistics model and methodology have been recently reformed for, among other things, incorporating clear official data in that regard, which has been expressly notified as a transposition measure.<sup>22</sup> Accordingly, official data on the collective bargaining coverage rate have been already published, corresponding to years 2021, 2022, 2023 and 2024. Those statistics show a coverage rate which is over the critical threshold of 80% referred to in Article 4 of Directive (EU) 2022/2041, concretely 91.2% in 2021, 91.5% in 2022, 91.8% in 2023 and 92% in 2024.<sup>23</sup> Anyhow, the concrete methodology for measurement, which entails certain exclusions of some categories of sectors and occupations, might be controversial and somewhat tend to overestimate the coverage rate, so the issue might deserve further attention, and it might be interesting to see the reaction of the EU Commission when this data are presented for monitoring, following the procedures of Article 10 of the Directive.

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<sup>21</sup> Ratti L., nt. (4), 858 ff.

<sup>22</sup> Real Decreto 51/2024, de 16 de enero, por el que se aprueba el Programa anual 2024 del Plan Estadístico Nacional 2021-2024, available at <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=NIM:202500144>.

<sup>23</sup> Ministry of Labour, *Statistics on Collective Bargaining*, available at the following link: [https://www.mites.gob.es/es/estadisticas/condiciones\\_trabajo\\_relac\\_laborales/CCT/welcome.htm#](https://www.mites.gob.es/es/estadisticas/condiciones_trabajo_relac_laborales/CCT/welcome.htm#).

Probably acknowledging the commented implications, the Government seems to be considering the adoption of new normative measures related to minimum wage. The Annual Normative Plan of the Spanish Government for year 2025 foresees an amendment to the Workers' Statute (namely to its Article 27) and the approval of a Royal Decree with the aim of achieving an improved transposition of Directive (EU) 2022/2041 on adequate minimum wages.<sup>24</sup> Those reforms seem to focus mainly on the aforementioned aspects of the minimum wage advisory body, the criteria for fixation and update of the minimum wage, and some measures in the field of collective bargaining, with especial attention to its coverage rate. However, these expected legal innovations have not been effectively enacted, and it is doubtful if they will be, given the current political and parliamentary situation.

Beyond the strictly legal perspective, the Directive on adequate minimum wages deploys a relevant symbolic or political value in Spain. After many years in which the minimum wage was set at modest amounts, far from the internationally recommended standards, there have been successive significative increases since 2019, justified precisely by the objective of progressively reaching the standard of 60% of the average wage recommended by the Council of Europe.<sup>25</sup> This governmental course of action has been questioned from different sectors. The latest increases have been supported by the most representative trade union organisations, but opposed by the employers' associations, and they have been object of political controversy. Therefore, the Directive on adequate minimum wages can be seen as an endorsement by the EU institutions of this trend of governmental action, as it recalls its consistency with European orientations.

## 5. Final remarks.

The Directive on adequate minimum wages is an important milestone in the European Union's social policy, as it is the first time that it explicitly addresses the guarantee of fair and sufficient remuneration to ensure a decent standard of living for all workers, a social right of the utmost importance, especially from the perspectives of the redistribution of wealth, the reduction of inequalities and the fight against poverty. It is true that it does not establish a "European minimum wage" as such, and that, constrained by the limits to EU competences and by the necessary respect for the national laws and practices of the member states, as set in the Treaty on the Functioning of the European Union, the Directive has a very self-restraint content.

Indeed, the analysis of the text of the Directive reveals that few specific obligations are imposed on member states, sometimes formulated in somewhat generic or unspecific terms and usually leaving a wide margin of discretion to each country when establishing its own model for ensuring minimum sufficient remuneration. Moreover, member states will be able to maintain the minimum wage systems they previously had, without being forced to make

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<sup>24</sup> Gobierno de España, *Plan anual normativo 2025*, 15 April 2025, available at the following link: <https://transparencia.gob.es/publicidad-activa/por-materias/normativa-otras-disposiciones/plan-anual>.

<sup>25</sup> Pérez Hernández M.M., *La subida del salario mínimo profesional en 2019 y 2020, contexto y cuestiones jurídico-prácticas*, *Nueva Revista Española de Derecho del Trabajo*, 231, 2020, 107 ff.

major changes. Even those states that do not have a legal minimum wage as such will not be obliged to establish one, if guarantees on sufficient remuneration are adequately provided by collective bargaining.

However, that does not mean that Directive (EU) 2022/2041 on adequate minimum wages is an irrelevant EU Law text. On the contrary, there are many provisions in it from which valuable contributions can be derived, for example, in relation to the monitoring and expansion of the collective bargaining coverage rates or regarding the greater formalization and objectification of the processes for setting and updating minimum wages, with greater doses of transparency and predictability. Beyond, the Directive certainly irradiates a symbolic value, since it reflects in an EU Law binding normative text the objective of universalising the guarantee of a sufficient and adequate minimum remuneration throughout Europe, at both national and supranational level, pointing -even if indirectly- to an upward convergence between the different member states in this field. In addition, it acquires significant political value as far as it represents a notorious turn or rectification with respect to the orientations before followed by the European Union itself under the paradigm of the so-called “austerity” policies, such as, for example, those that in the past tried to force the decentralization and weakening of collective bargaining in several member states, and those according to the mantra of the “link between wages and productivity as the only conceivable wage dynamic”.<sup>26</sup>

From the domestic perspective, the greater or lesser impact will depend on the previous situation of minimum wages in each country. In those with more complete and generous regulations and amounts in this regard, the new text will not have a great impact. But it will surely have a significant influence on those with quantitatively or qualitatively lower standards. From the Spanish perspective, there will surely be no far-reaching implications, since the minimum wage model adequately meets the standards of the Directive in overall terms. Moreover, it could be said that the spirit of the Directive is in perfect harmony with the course of action followed in recent years of increasing the minimum wage to place it at an adequate and sufficient amount, taking as an indicator for this assessment that of 60% of the average wage. Nevertheless, full compliance with the terms of Directive (EU) 2022/2041 on adequate minimum wages still requires some small adjustments in our legislation, in addition to other actions to promote collective bargaining and to collect, publish and manage information on wage issues and collective agreements.

### Bibliography

Álvarez Alonso D., *Salarios mínimos en la Unión Europea: propuesta de Directiva e implicaciones para España*, in *Revista del Ministerio de Trabajo y Economía Social*, 152, 2021;  
Calvo Gallego J., Gómez Álvarez Díaz R. (eds.), *Trabajadores pobres y pobreza en el trabajo. Concepto y evolución de la pobreza en la ocupación: el impacto de las últimas reformas legales*, Laborum, Murcia, 2017;

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<sup>26</sup> Loffredo A., Orlandini G., nt. (6), 2.

- Calvo Gallego J., *Trabajadores pobres y pobreza de los ocupados: una primera aproximación*, in *Temas laborales*, 134, 2016;
- 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;
- Eurofound, *Minimum wages in 2021: Annual review, Minimum wages in the EU series*, Publications Office of the European Union, Luxembourg, 2021;
- García Murcia J., *Derecho a una remuneración suficiente*, in Monereo Pérez J.L., Molina Navarrete C., Moreno Vida M.N. (ed.), *La Constitución socioeconómica de España*, Comares, Albolote, 2002;
- García-Perrote Escartín I., *El salario mínimo interprofesional*, in De La Villa Gil L.E. (ed.), *Estudios sobre el salario*, Acarl, Madrid, 1993;
- Llompарт Bennàssar M., *La esperada revisión de la Directiva (UE) 2022/2041, sobre unos salarios mínimos adecuados en la UE, por parte del Tribunal de Justicia de la UE*, in *Briefs AEDTSS*, 113, 2025;
- Lo Faro A., *Promotion of Collective Bargaining on Wage-Setting*, in Ratti L., Brameshuber E., Pietrogiovanni V. (eds.), *The EU Directive Adequate Minimum Wages: Context, Commentary and Trajectories*, Hart Publishing, Oxford, 2024;
- Loffredo A., Orlandini G., *La Propuesta de Directiva de la Unión Europea sobre el salario mínimo adecuado*, in *NET21*, 4, 2021;
- Martínez Girón J., *La nueva Ley alemana reguladora del salario mínimo general: Comentario, estudio contextualizador y traducción castellana*, in *Revista General de Derecho del Trabajo y de la Seguridad Social*, 41, 2015;
- Menegatti E., *Much ado about little: the Commission proposal for a Directive on adequate wages*, in *Italian Labour Law e-Journal*, 14, 1, 2021;
- Molina Navarrete C., *El suelo salarial no solo debe ser mínimo, sino adecuado para una vida digna ¿qué acaba de decir el TJUE al respecto?*, in *Briefs AEDTSS*, 110, 2025;
- Pérez Del Prado D., *Artículo 27. Salario mínimo interprofesional*, in Cruz Villalón J., García-Perrote Escartín I., Goerlich Peset J.M., Mercader Uguina J. (eds.), *Comentarios al Estatuto de los Trabajadores*, Lex Nova, Madrid, 2011;
- Pérez Hernández M.M., *La subida del salario mínimo profesional en 2019 y 2020: contexto y cuestiones jurídico-prácticas*, in *Nueva Revista Española de Derecho del Trabajo*, 231, 2020;
- Ratti L., Brameshuber E., Pietrogiovanni V. (eds.), *The EU Directive Adequate Minimum Wages: Context, Commentary and Trajectories*, Hart Publishing, Oxford, 2024;
- Ratti L., *Minimum wage*, in Hiessl C. (ed.), *EU Labour Law. A Commentary*, Wolters Kluwer Law International, Alphen aan den Rijn, 2025.

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