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Minimum Equivalent Fees. A proposal to re-establish income equality for equivalent work

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Abstract

The CJEU's recent judgment in Case C-19/23, which upholds most of Directive 2022/2041 on adequate minimum wages, highlights an overlooked issue: the removal of minimum professional fees in Spain, and most EU Member States, has created a structural asymmetry between salaried and self-employed workers. This asymmetry undermines the constitutional right to fair remuneration and the European principle of non-discrimination, especially as self-employed workers have been increasingly treated as "legal entities" which deprives them of rights inherent to natural persons. Through an analysis of Spanish and European legislation, constitutional jurisprudence, and income data from sectors such as architecture, the article shows that current regulation produces material discrimination. It then proposes Minimum Equivalent Fees (MEF) as a proportional, legally coherent mechanism to restore income equality for equivalent work, aligned with EU law and CJEU case law.

Keywords: Self-employed workers; Minimum Equivalent Fees; Non-discrimination; Fundamental rights; Freedom of enterprise; European Union law.

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1. Introduction.

The CJEU's recent judgment in Case C-19/23, upholding most of Directive 2022/2041 on adequate minimum wages,[1] highlights an overlooked issue: the elimination of minimum professional fees in Spain, and most EU Member States, has created structural asymmetry between employees and self-employed workers regarding fair remuneration. Employees have their income protected by the Statutory Minimum Wage (SMW) and/or collective agreements, ensuring adequate income for full-time work, whereas self-employed workers lack such protection, meaning their income may fall below the SMW even for equivalent work. This lack of protection affects over 3.3 million self-employed workers in Spain[2] and over 32.6 million in the EU.[3]

Because the SMW represents the minimum required for decent living, this constitutes a potential violation of constitutional rights: the right to work providing sufficient remuneration (Article 35.1 Spanish Constitution, CE, and Article 4 European Social Charter)[4] and non-discrimination – equal remuneration for equal work (Article 14 CE and Article 21 Charter of Fundamental Rights of the European Union.[5] Full-time professional work (approximately 1,750 hours annually) should provide sufficient remuneration to meet the needs of workers and their families and equal income regardless of employment status.

However, data analysis reviewed in chapter 3.1 reveals breaches of both rights. For instance, in Italy self-employed workers have, on average, lower incomes and greater vulnerability to poverty than employed workers.[6] Also data relating to Spanish, and EU, architects' 2020 income show that self-employed workers have lower incomes than employed workers. Both cases confirm this potential discrimination materializes in practice.

To better understand the current situation, this paper reviews the evolution of workers remuneration compared to the architectural sector in Spain, since the early 20th century, including the link to social objectives of improving architectural quality, the progressive equivalence between salary and fees in legislation, and the breakdown of this link in late-20th-century legislation, with the elimination of minimum professional fees.

[1] Molina Navarrete C., *El TJUE salva lo mollar de la Directiva de salarios mínimos adecuados y, de paso, ¿refuerza el estándar objetivo del CEDS?*, in *CEF. – Laboral-Social*, 13 November 2025, available at the following link https://www.laboral-social.com/sites/laboral-social.com/files/CMN_13_11_2025.pdf (last accessed on 6 December 2025).

[2] Ministerio de Trabajo y Economía Social, *Estadística de personas trabajadoras por cuenta propia afiliadas a la Seguridad Social (Autónomos)*, January 2025.

[3] Eurostat, *Self-employed persons – 32.6 million persons aged 15 to 74 in the European Union*, News release, 30 April 2019, https://ec.europa.eu/eurostat/web/products-eurostat-news/-/EDN-20190430-1 (last accessed on 6 December 2025).

[4] This concept also appears in the Italian Constitution, Article 36, which asserts the «right of workers to a minimum wage… to be quantified in accordance with the guiding principles of "sufficiency" and "proportionality"». *See* Menegatti E., *The Italian Way to the Minimum Wage: Time for a Change?*, in *The Italian Law Journal*, 10, 1-2, 2024, 623 and 626.

[5] Spanish Constitutional Court ruling STC 31/1984 held that «the principle of equality (Article 14 CE) implies the elimination of any discrimination in all remuneration factors and conditions for the same work or for work attributed equal value».

[6] Istituto Nazionale di Statistica (ISTAT), *Condizioni di vita, reddito e carico fiscale delle famiglie: anno 2016*, Report, 6 December 2017, https://www.istat.it/wp-content/uploads/2017/12/Report-Reddito-e-Condizioni-di-vita-Anno-2016.pdf (last accessed on 7 December 2025).

Since many professions experienced as consequence significant earnings reduction and precarious conditions, professionals have denounced fees elimination prevents fair remuneration thus proper professional work. Yet several initiatives to ensure fees commensurate with work difficulty, volume, responsibility, and client benefit have faced strong opposition from Spanish National Commission for Markets and Competition (CNMC), which interprets such fees as unacceptable "barriers to competition" under EU economic models.[7]

However, EU legislation and CJEU rulings since 2006 support a more nuanced interpretation of freedom of enterprise as subordinate to social objectives, challenging the CNMC justification. Besides, some countries (e.g., Italy) have approved legislation on minimum fees, which has not been challenged. Thus, consistent with the latest regulatory provisions and CJEU rulings, this paper proposes the concept of Minimum Equivalent Fees (MEF): reintroducing minimum fees aiming to equalize minimum net income between salaried and self-employed workers performing equivalent hours.

We start by examining Spanish legislation evolution over the last century regarding remuneration for salaried and self-employed workers, focusing particularly on architectural work.

2. Evolution of Workers Remuneration and Architectural Fees in Spain (1900-2025).

2.1. Early Labour Regulations and the Emergence of Workers' Rights.

Labour rights' systematic development became evident in the late 19th century when the Industrial Revolution led to factory workers labouring under harsh conditions (12- to 16-hour days, low wages, no holidays). Trade unions and labour movements influenced Western governments to enact regulations gradually improving workers' conditions.

In Spain, the first labour regulation was the Law of 30 January 1900 on accidents at work, establishing employer responsibilities for compensation and medical assistance. The working day was regulated by Laws of 1918 and 1919, limiting it to 8 hours daily with 48-hour weekly maximum. In 1920, the Ministry of Labour replaced the Institute of Social Reforms, acquiring exclusive competence in labour law review and inspection in 1931.

The Constitution of 1931 established workers' right to sufficient remuneration, declaring that "the Republic shall ensure every worker the conditions necessary for a decent existence" and legislate on the minimum and family wage (Article 46).[8] The Labour Contract Law of 21 November 1931 established that "workers shall be entitled to remuneration" and that employment contracts must specify "the remuneration, in cash or in kind, to be received by the worker" (Article 4).

[7] *See* Rodríguez-Rodrigo J., *Elaboración, por los colegios de abogados, de criterios orientativos para determinar los honorarios de los profesionales: Práctica calificada de anticompetitiva*, in *Cuadernos de Derecho Transnacional*, 16, 1, 2024, 564.

[8] This incorporated the 1928 ILO Minimum Wage-Fixing Machinery Convention into Spain's constitutional framework. However, the civil war and subsequent nationalist victory led to a regulatory redesign.

2.2. Minimum Wage and Social Security Development.

The Labour Charter of 9 March 1938 established the essential nature of work and declared the State shall guarantee workers security in employment. It set as workers right that their wage "shall be, at a minimum, sufficient to provide the worker and his family with a moral and dignified life" (section III). It was continued by Law of 16 October 1942 which established labour regulations by economic sector, under Ministry of Labour responsibility, paving the way for a statutory minimum wage, within a framework where sectoral or company agreements would prevail if more beneficial to workers.

Decree 55/1963 of 17 January took a further step towards a unified statutory minimum wage in Spain, ensuring those who performed work received sufficient remuneration for a decent life, and emphasising that workers' income must equal or exceed the higher figure between the statutory minimum wage and collective bargained wages (Article 2).

Further refinement of the wage structure was implemented by Decree 907/1966 and Law 16/1976 of 8 April on Labour Relations, which Article 28 established a state-set minimum wage as the minimum income for workers, as an amount enabling "the worker and his or her family a moral and dignified life".[9]

The current Spanish Constitution of 1978 consolidated these rights. Article 35.1 states: "all Spaniards have the duty to work and the right to work, to freely choose their profession or trade, to promotion through work and to sufficient remuneration to satisfy their needs and those of their families". Article 14 establishes equality and non-discrimination as fundamental rights.

Law 8/1980 on the Workers' Statute defined the scope of employment for individuals providing paid services on behalf of others (Article 1) and regulated key conditions such as working hours, holidays, and remuneration. Article 26 specified that wages include all economic payments – cash or in kind – received for professional services or rest periods considered as work, while excluding expense reimbursements, social security benefits, and compensations; it also required collective agreements to state annual pay based on total working hours.

Additionally, Article 27 provided that the Government shall set the statutory minimum wage each year after consulting trade unions and employers, considering inflation, productivity, labour's share in national income, and the general economic situation, with a semi-annual review if price forecasts are not met. The minimum wage is also exempt from seizure, making it equivalent to the minimum income necessary for a decent life under Article 35 of the Spanish Constitution.

Subsequently, various regulations were enacted, such as Royal Legislative Decree 1/1995 of 24 March and Royal Legislative Decree 2/2015 of 23 October, both approving revised texts of the Workers' Statute Act and maintaining the spirit of the original legislation.

Over time, Spanish labour law has evolved to consolidate workers' right to a decent standard of living through their work, establishing key principles: the statutory minimum

[9] Law 16/1976 differentiated for the first time between employees and self-employed workers.

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wage represents the minimum threshold necessary for such a standard[10]; where collective agreements set higher pay rates, the agreed salary becomes the applicable minimum; workers are entitled to rest periods, a maximum eight-hour working day, and annual paid leave; and wages exclude operating costs, employer social security contributions, and civil liability insurance related to the work, all of which must be borne by the employer.

Noteworthy, Spain's accession to the European Economic Community in 1986 has not impeded this process of consolidating the right to adequate remuneration for salaried workers. Indeed, the recently adopted Directive 2022/2041 on adequate minimum wages has served to strengthen employees' rights, particularly in light of the CJEU judgment in Case C-19/23, which confirmed the validity of the majority of its provisions. Integration into the European Union has therefore not diminished the protection afforded to employees; rather, it supports and even promotes it.

It is now relevant to review legislation specifically targeting the remuneration and scope of architects' work.

2.3. Parallel Evolution: Architectural Fees and Work Quality (1905-1977).

Until the 19th century, architectural fees in Spain were negotiated case-by-case based on project complexity and architect prestige. Urban expansion driven by migration increased construction, highlighting the need for standardized regulation.

The Royal Decree of 2 November 1905 established Spain's first fixed fee schedules for architects, distinguishing six work types and grading fees by project importance and cost. For building projects, it set fee percentages relative to estimated construction cost, increasing with difficulty[11], and detailed each project phase's tasks and proportional fees. It also applied these standards to State Architects involved in construction, renovation, or repair (Chapter II), applying equal fees to both self-employed and employed architects. Thus, the Decree defined the phases and content of architectural work, guaranteeing that professional quality and social function were linked to fair remuneration payment, regardless of employment status.

The Royal Decree of 1 December 1922 updated the fee schedules, maintaining minimum and percentage-based structures while adjusting rates to economic conditions. It reinforced the equivalence between self-employed and employed remuneration (*fees* and *wages*) outlined in 1905, specifying calculation rules for State-employed architects' wages:

[10] Royal Decree 231/2020 of 4 February, establishing the statutory minimum wage for 2020 affirms that «the statutory minimum wage fulfils the dual objective of establishing a minimum hiring wage and determining what is considered a sufficient wage level».
[11] An early precedent appears in Hammurabi's Code (Law 229), which linked architects' fees to the building's area – roughly proportional to construction cost. In return, it imposed severe responsibilities on architects (Laws 229-233), based on *reciprocity*. In the 1905 Royal Decree, fees for new construction ranged from 10-5% for smaller budgets to 5.5-0.5% for larger ones, depending on complexity, with a set minimum. The approach's soundness is shown by its continuity in fee scales issued by Spain's Ministry of Finance in 2015. Italian Decreto Ministeriale, of 17 June 2016, shows some parallel in the variables assessed for determining the fees for architectural works.

"Architects responsible for the conservation of State buildings shall receive *emoluments equivalent to fees* in relation to the building's importance, never less than 6,000 pesetas annually. (...) Architects … who are *assigned a salary or emoluments equivalent to fees* for (their) services, shall receive not less than 6 per cent of the … general state budget for such works" (Decree 1922, Chapter II; emphasis added).

Therefore, legislation on architectural fees followed the principles of *remuneration* being fair and *equivalent*, for both employed and self-employed architects, and proportional to the work's difficulty, importance, cost and risk.

After several building collapsed in the 1920s, the government introduced measures to ensure compliance with quality standards. Royal Decree No. 2653 of 27 December 1929 made membership in the Association of Architects mandatory to guarantee professional competence. The Decree of 13 June 1931 then approved the Statutes of Architects' Associations, requiring an architecture degree and membership to practice, and assigning the associations responsibility for supervising quality, managing fee collection, and representing the profession institutionally.

2.4. Consolidation of Fee-Salary Equivalence (1977).

Royal Decree 2512/1977 of 17 June culminated this evolution, establishing proportionality between architects' fees and their knowledge, dedication, responsibilities, and expenses. It continued the 1905 and 1922 decrees, regulating fees for both self-employed and private employees (Fee Schedule VIII) and public employees (Fee Schedule IX). Fee Schedule VIII established that an employed architect's salary must equal the self-employed fees minus the expenses covered by the employer (e.g., liability insurance, social security). Therefore, the fee-salary equivalence initiated in 1905 and expanded in 1922, was refined, ensuring fair and equivalent remuneration for equal work.

Moreover, the 1977 Decree ensured that, with the 1978 Constitution, architects' remuneration complied with Article 35: architects working a standard annual working day *would receive sufficient remuneration to meet their needs and those of their family*.

2.5. Dismantling the Protective Framework (1997-2009).

While Spain's entry into the EEC in 1986 strengthened salary protection for employees, it has had the opposite effect on the self-employed, gradually eroding their right to fair remuneration. The 1993 Treaty of Maastricht accelerated the creation of the European Single Market and Eurozone, emphasizing competition through the free movement of people, goods, services, and capital. Within this economic liberalization process, the paradigm emerged that EU Member States should urgently diminish professional regulations to remove "barriers to competition".

Within this liberalization process, Spain's Law 7/1997 abolished minimum remuneration for self-employed architects, making professional associations' fee schedules merely indicative. However, the law did not repeal nor reduce architects' work responsibility or documentary content. Thus, Spain's legislature broke the long-standing *proportionality* between work quality, client benefit, responsibility and architects' remuneration in force since 1905. It also ended the "equal pay for equal work" principle implicit in the fee-salary equivalence in earlier decrees.

In pursuit of the European Single Market, in 1997, the Spanish regulatory framework was redefined allowing thereafter that self-employed architects' remuneration fell below agreed wages and the statutory minimum wage. To justify this change, the decree introduced a key linguistic shift, redefining freelance architects from "workers" to "professions providing services". This redefinition was crucial: it replaced a century-old link between fair fees and work quality with a view of architects as service providers/legal entities excluded from Article 35 of the Constitution, thus depriving professionals of recognition as natural persons and the right to a decent income from full-time work.

However, removing Article 35 protection did not reduce the work content and quality requirements of professional work, established in 1905, 1922, and 1977 decrees. Later regulations preserved, and continued expanding, previous architectural work's documentary content (Building Regulations Act, Technical Building Code, etc.) at the same time architects' right to fair remuneration was eliminated.

After the 2000 Lisbon European Council, debate over removing competition barriers intensified which reflected in several EU documents.[12] The discourse that *professionals were not workers, but undertakings providing services* extended. These texts even anticipated that removing minimum fees would reduce professional income, a result deemed desirable as such earnings were considered excessively high.[13] As a result, the Commission adopted Directive 2006/123/EC on services in the internal market, which formally replaced the notion of professionals as workers with that of undertakings providing services (Articles 4-5). Article 15 did not mandate eliminating minimum fees, but rather justifying them through *necessity* (public interest) and *proportionality* (no more restrictive than required).

Following this Directive, the Spanish legislature enacted Law 25/2009, which furthered that self-employed architects are not natural persons working for remuneration, but undertakings offering services for a price. Thus, it severed the link between work quality and fair remuneration, and banned professional associations from issuing indicative fee scales. Since then, no new Spanish legislation has addressed self-employed architects' fees, while employed architects remain covered by sectoral collective agreements.

[12] Including: *Invitation for Comments on the Regulation in Liberal Professions and its Effects*, 2003/C 84/03; Commission of the European Communities, *Communication from the Commission – Report on Competition in Professional Services*, 9 February 2004, COM(2004)83 final; Commission of the European Communities, *Professional Services – Scope for more Reform. Follow-up to the Report on Competition in Professional Services*, 5 September 2005, COM(2005)405 final.

[13] Yet they failed to anticipate that denying protections to self-employed professionals would create a double harm: direct discrimination against the self-employed and downward pressure on employee wages (*see* paragraph 4.3 below).

3. Breach of the constitutional framework: discrimination of Self-Employed Workers.

3.1. Divergent evolution of self-employed versus employed architects' rights.

The review identifies two stages in architects' remuneration in Spain. For most of the 20th century, employee and self-employed pay evolved in parallel with explicit equivalence (Decrees 1905, 1922, 1977). This parity was partly broken in 1997 and completely in 2009.

From 1997 onward, legislation put an end to the proportionality between self-employed architects' remuneration and their social role (quality objectives and responsibilities) established earlier. While early 20th century laws aimed for high-quality work with fair, equivalent pay, later 20th century reforms increased workload and complexity while removing fair remuneration guarantees for the self-employed.

Over the last three decades, Spanish legislation has protected employed architects' conditions but worsened those of the self-employed, reducing their rights. The current framework therefore unjustifiably discriminates between citizens – some cannot work below a minimum hourly wage while others can – violating Article 14 of the CE and Article 21 of the CFREU.[14] Moreover, the relationship between the statutory minimum wage and Article 35.1 of the Spanish Constitution implies that current legislation also fails to protect self-employed architects' right to earn a decent living from their work.

Regarding Article 35's constitutional mandate, the Constitutional Court (STC 31/1984) held that "the principle of equality (Article 14 SC) implies eliminating any discrimination based on personal or social circumstances in all factors and conditions of remuneration for the same work or for work of equal value". Likewise, the Congress of Deputies interprets Article 35 as implying the elimination of "any discrimination based on personal or social circumstances", whether expressly mentioned in Article 35 or included within the general clause of Article 14.[15]

Notably, when an architect designs a house and supervises construction, the work has equal value whether performed directly for the future resident (who pays fees), or through a company (which pays salary). It is thus work of equal value under STC 31/1984. Since the term "remuneration" encompasses both salaries and fees, the absence of minimum professional fees breaches the SC (Articles 14 and 35), the ESC (Article 4) and CFREU (Article 20-22 and 31), creating de *jure* discrimination against self-employed architects.

[14] Spanish Constitutional Court's judgment (STC 90/1989) is relevant: «Article 14 of the Spanish Constitution prohibits unequal treatment in both regulatory provisions and their specific application by public authority to persons in essentially similar situations and, if elements of differentiation are introduced to justify different treatment, those elements must be reasonable and not constitute an excuse or pretext for arbitrarily producing unequal and therefore discriminatory treatment».

[15] *See* https://app.congreso.es/consti/constitucion/indice/sinopsis/sinopsis.jsp?art=35&tipo=2.

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Data confirm that this legal discrimination materializes in practice: the annual income of self-employed architects is now lower than that of employed architects:

Table 1: Median pre-tax income by type/job position for architects in Spain in 2020.

	Position	**Annual income**
Architects employed by others Public Sector	Other public sector jobs	€53,629/year
	All public sector jobs	€48,266/year
	Local/Central Administration Positions	€44,512/year
Architects employed by others Private sector	Sole Director / Partners / Directors / Senior Management	€32,178/year
	Private Companies	€28,424/year
	Private company employees	€26,815/year
Self-employed architects		**€24,133/year**

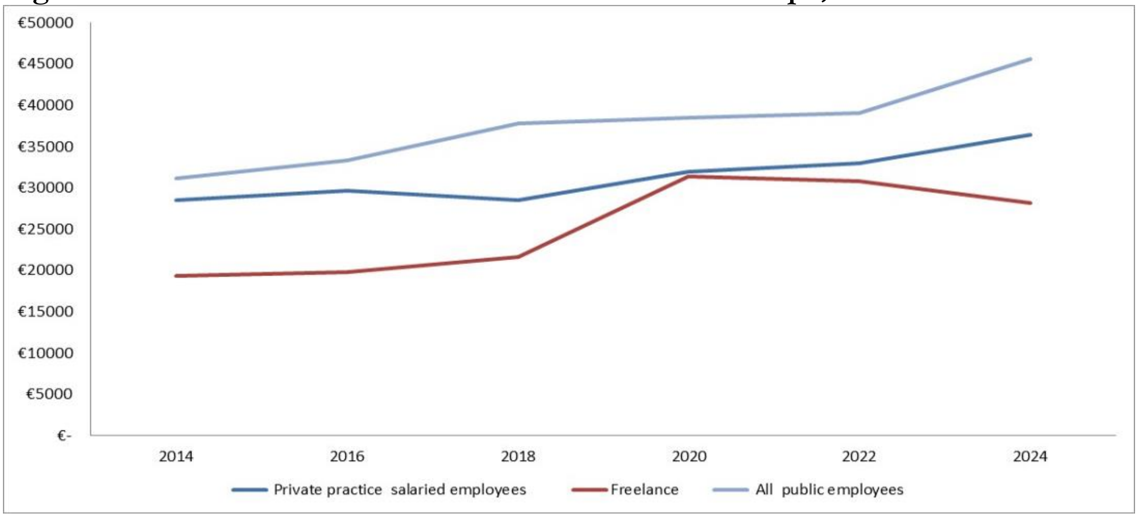
Source: Architects' Council of Europe, *The Architectural Profession in Europe 2020: A Sector Study*, Mirza & Nacey Research Ltd, 2021, 55. Note: original values in PPS have been converted into nominal euros, using the 0.99 factor indicated by Eurostat for Spain 2020 (PPS EU 27_2020). *See* Eurostat, *Purchasing Power Parities (PPPs), price level indices, nominal and real expenditures*, https://doi.org/10.2908/PRC_PPP_IND (last updated 10 July 2025).

Table 1 shows that self-employed architects in Spain earn less than those in any other employment category. Adjusted ACE data indicate a 2020 median income of €24,133 for the self-employed, compared with €28,424 for private-sector architects and over €44,512 in the public sector. This €24,133 figure is also well below the 2020 Collective Agreement Salary of 26.323,57[16]. Hence**,** even median self-employed income – let alone lower earnings – falls clearly below the agreed wage. The resulting breach of Article 14 SC and Articles 20-23 CFREU is therefore not theoretical but evidenced by the data: the absence of minimum fees directly discriminates against self-employed architects.

At the European level, a long-term trend (2014-2024) similarly shows self-employed remuneration consistently below that of both private and public employees (*see* Figure 1 below).

[16] Resolution of October 7, 2019, of the General Directorate of Labor, which registers and publishes the 19th Collective Agreement for the engineering companies and technical studies offices sector, available at https://www.boe.es/boe/dias/2019/10/18/pdfs/BOE-A-2019-14977.pdf.

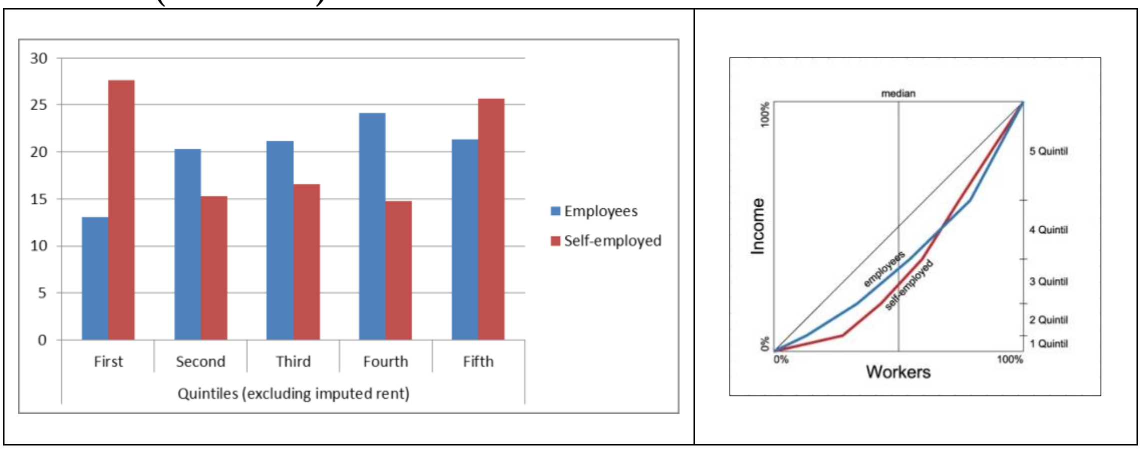
Figure 1: Remuneration in the Architecture Sector in Europe, 2014-2024



Source: Architects' Council of Europe, *The architectural profession in Europe 2024: A sector study (Part II, Final edition)*, Mirza & Nacey Research Ltd, 2025, 57, https://ace-cae.eu/wp-content/uploads/2025/04/2024-ACE-Sector-Study-EN-04042025.pdf (last accessed on 13 December 2025). Noteworthy, the sampled countries include Switzerland and the United Kingdom.

Italian data also show that self-employed workers earn less on average than employees (€27,310 vs. €30,328 median income in 2015) and face a higher risk of poverty (33.7% vs. 22.1% in 2016)[17]. As Menegatti argues[18], average self-employment income has consistently remained below wage income since 2003, with the gap widening after 2009. Moreover, income inequality among the self-employed is markedly greater than among employees, as clearly illustrated in the data (*see* Figure 2).

Figure 2: Income inequality according to type of employment. Figure 2.A – Distribution of workers in quintiles according to employment type; figure 2.B – Gini coefficient (Estimation).



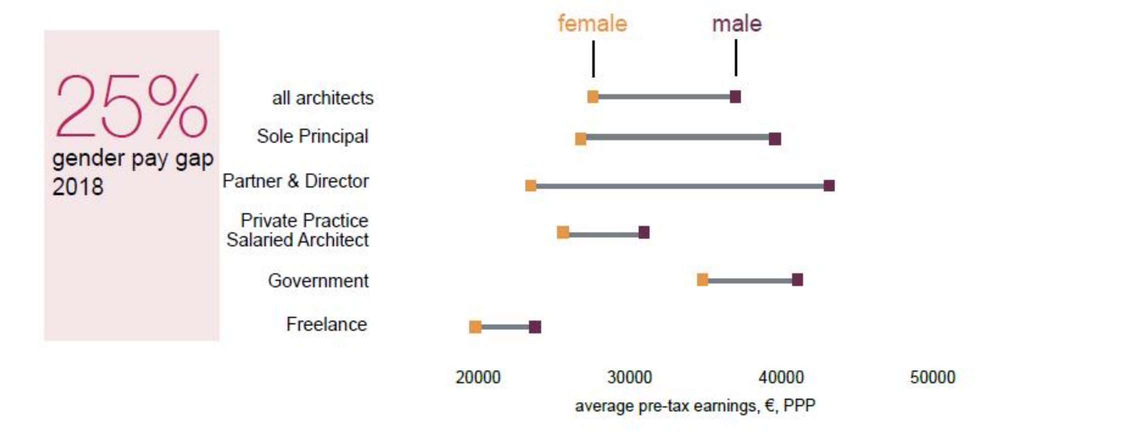
Source: Author's own elaboration. Distribution of workers in quintiles from Istituto Nazionale di Statistica (ISTAT), *Income and living conditions (Stat Report 2016)*, 2017, available at https://www.istat.it/en/files/2017/12/Income-and-living-conditions-Stat-Report-2016.pdf, 8 (last

[17] Istituto Nazionale di Statistica (ISTAT), nt. (6).
[18] Menegatti E., nt. (4), 626.

accessed 8 December 2025). Gini Coefficient in Italy 2015 was 33.1 (ibid 1). Employees and self-employed Gini coefficient calculated using simplified procedure based on ibid.

While simplified data only allow an approximate Gini comparison, self-employed workers show a significantly higher Gini coefficient – about 1.2 times that of employees. This greater inequality indicates a larger share of low-income, precarious self-employed workers. It likely also reflects a subtle form of age discrimination, as older professionals often turn to self-employment out of necessity after exclusion from salaried work. Additionally, income data reveal a significant gender gap among self-employed architects (*see* figure 3 below).

Figure 3: Gender Pay Gap in the Architecture Sector in Europe, 2018.



Source: Architects' Council of Europe, *The Architectural Profession in Europe 2018: A Sector Study*, Mirza & Nacey Research Ltd, 2019, 4, available at the following link: https://build-up.ec.europa.eu/sites/default/files/content/2018_ace_report_en_fn.pdf (last accessed on 13 December 2025). Noteworthy, the significance of the gap is amplified as earnings decrease.[19]

Similarly, Eurostat data confirms a substantial gender remuneration gap among self-employed workers:

Table 2: Median Remuneration of Self-Employed Workers by Gender in Europe.

	2008	2009	2010	2011
Women	€9,541/year	€9,844/year	€9,199/year	€9,462/year
Men	€13,597/year	€14,982/year	€12,271/year	€12,647/year
Remuneration Gap	29.8%	34.3%	25.0%	25.2%

Source: European Institute for Gender Equality (EIGE), based on Eurostat, available at the following link https://dgs-p.eige.europa.eu/data/information/bpfa_f__bpfa_f20b.

Italian data confirm a significant 31.56% gender remuneration gap among the self-employed, with 2015 incomes of €26,008 for men and €17,799 for women. After taxes and social security deductions, the gap narrows slightly to 29.77%, yet women's disposable income (€12,148) remains far closer to the poverty threshold (1.34×) than men's (€17,298;

[19] Alvira R., *Medir la Brecha Retributiva por Género*, in Solano Lucas J.C., Cermeño E.O., Bote Díaz M.A., Martínez J.B. (eds), *Actas del I Congreso Internacional de Equidad, Educación y Género*, Universidad de Murcia, 2018, 127-142, available at http://hdl.handle.net/10201/158021.

1.92×)[20]. These data show that self-employed workers face poorer conditions than employees, generating unjustified discrimination that disproportionately affects women and, likely, older workers.

Therefore, it is confirmed that removing minimum fees breaches the non-discrimination principle creating inequality according to employment type, gender and age. However, in response to this, the CNMC contends that freelance workers are not protected under Article 35 of the Constitution and thus lack the right to fair remuneration, claiming it is inappropriate to "equate the price a company charges for its services with an employee's salary". Assessing this claim requires examining a second constitutional breach: the internal contradiction within Spanish and European regulations regarding the status, rights and duties, of freelance workers.

3.2. The Status of the Self-Employed Worker: Natural Person or Legal Entity? A Spanish-European Legislative Paradox.

Claiming that freelance workers are undertakings rather than natural persons has been central to Spanish and EU arguments denying their right to fair remuneration. However, this view contradicts both available data and multiple legislative provisions.

Factually, 78% – nearly four in five – work personally without employees.[21] Thus, even if hiring others implied losing natural-person status (a debatable point rejected in several laws), this claim would be wrong in most cases: freelance workers are primarily individual workers.

Moreover, Spanish law generally defines self-employed workers as *natural persons*, even when they employ others, rather than as companies. For example, Social Security legislation classifies them by personal traits such as nationality, sex, and age. *Decree 2530/1970 of 20 August* defines a self-employed person (Article 2) as "anyone who habitually, personally and directly carries out economic activity for profit without being subject to an employment contract, even if using paid services of others". Article 3 further specifies that those covered are "Spanish nationals over 18, regardless of sex or marital status, residing and normally working in national territory".

This framework confirms that Article 35.1 protection extends to freelance workers. The preamble to *Law 20/2007 on the Statute of Self-Employment* states: "the Constitution includes rights applicable to self-employed workers. Article 35 recognises Spaniards' duty and right to work to advancement through work and to sufficient remuneration to meet their own and their families' needs".

Article 1 of the law defines self-employed workers as *natural persons*: "this Law shall apply to *natural persons who* habitually, *personally*… carry out economic or professional activity for

[20] We use €750/month as intermediate value in Istituto Nazionale di Statistica (ISTAT), *La povertà in Italia: Anno 2015*, Report, 14 July 2016, 6.

[21] Infoautónomos and University of Granada, *VI Estudio Nacional del Autónomo* (ENA 2025), 2025, https://www.infoautonomos.com/club-cursos/wp-content/uploads/sites/2/2025/11/ESTUDIO-NACIONAL-DEL-AUTONOMO-INFOAUTONOMOS-ENA-2025.pdf (last accessed on 6 December 2025).

profit, *whether or not they employ workers"* (emphasis added). Article 4 asserts self-employed workers' right "to exercise fundamental rights and public freedoms recognised in the Spanish Constitution and international treaties", including freedom from discrimination by sex, age, or any personal or social circumstance. Articles 23-25 further recognize freelance workers' right and duty to social security, stating "self-employed or freelance persons are entitled to remain in the public social security system, which shall guarantee them adequate social assistance and benefits".

Thus, Law 20/2007 grants self-employed workers the constitutional rights of natural persons – non-discrimination (Art. 14), fair remuneration (Art. 35), and social security (Art. 41) – and the constitutional duty to contribute to public expenditure (Art. 31) confirming freelance workers retain their natural-person status while practising their profession.

Moreover, since at least 2013, Social Security contributions for self-employed workers have been set at a minimum almost equal to those of minimum-wage employees, implying an institutional – though unstated – equivalence between minimum freelance income and the minimum wage. This is confirmed by data. For instance, the 2014 minimum wage was €645.30 per month for 14 payments (€9,034.20 yearly). Converted to 12 payments and adjusted, this equals €878.33 per month – virtually identical to the €875.70 monthly base for self-employed workers under Law 22/2013. This non-explicit equality has been preserved in later regulations.

Thus, by proportionality in supporting State expenditure (Art. 31 CE), the legislature effectively assumes self-employed income equals or exceeds the minimum wage, presuming equivalent minimum fees for calculating contributions yet without creating, and even forbidding, mechanisms to guarantee such remuneration.

Another significant example is Law 38/1999, on Building Regulations, which requires that main roles in the construction process be held by natural persons, expressly forbidding their assignment to legal entities. Chapter III defines the Building Agents: Developer (Article 9); Designer (Article 10); Builder (Article 11); Construction Manager (Article 12); Construction Supervisor (Article 13); Building Quality Control Entities and Laboratories (Article 14); Product Suppliers (Article 15) and Owners and Users (Article 16).

Crucially, Articles 10 and 12 – covering the Designer and Construction Manager roles, typically performed by architects – stipulate that these functions must be carried out by qualified natural persons, directly or indirectly contracted by legal entities. Legal persons cannot assume responsibility for drafting or managing architectural projects. These individuals bear substantial financial and criminal liability under Article 17, including responsibility for construction defects for up to ten years.

Additional legislation imposes natural persons' obligations on self-employed workers exceeding those of legal persons. For instance, self-employed must pay personal income tax instead of the lower corporate tax applied to legal persons.

Thus, the review reveals an internal contradiction in Spain's regulatory framework. While the above laws define freelance workers as *natural persons*, Laws 7/1997 and 25/2009 treat them as *legal persons*, depriving them of natural-person rights. Consequently, the system creates a *double standard* that breaches constitutional principles: self-employed workers bear fiscal and legal burdens similar to employees (e.g., under general tax law and Law 38/1999)

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yet are denied equivalent rights – particularly fair remuneration and equality regardless of employment status.

This contradiction is not unique to Spain; it also appears in EU law and case law. For decades, the EU framework has upheld the *principle of non-discrimination for self-employed workers*, notably through Council Directive 86/613/EEC on equal treatment between men and women engaged in self-employed activities. Article 1 sets its aim as ensuring equal treatment, while Article 2 defines self-employed persons as "all persons pursuing gainful activity for their own account including farmers and members of the liberal professions". Therefore, the Directive leaves no doubt that self-employed workers are natural persons subject to non-discrimination.

Directive 86/613/EEC has been replaced by Directive 2010/41/EU, which has reaffirmed this principle, confirming that EU law recognises self-employed workers as entitled to equal treatment. More recently, the European Commission Guidelines on the Application of EU Competition Law to Collective Agreements Regarding the Working Conditions of Solo Self-Employed Persons [2022] OJ C374/2 have further developed this approach, recognising the right to collective agreement for certain types of solo self-employed workers.

However, this recognition of self-employed workers as natural persons, with inherent rights, is contradicted by other EU regulations and decisions. In Wouters (C-309/99, of 19 February 2002), the Court held that lawyers perform an economic activity and are therefore "undertakings for the purposes of Articles 85, 86 and 90 of the Treaty" (now 101, 102, and 106 TFEU). It also asserted a professional association is an "association of undertakings" under Article 85(1)". Thus, European Commission Decision 2005/8 condemned the Belgian Order of Architects for publishing indicative fee scales, stating that "price-setting, even if merely indicative, affects competition".

This approach reappears in Commission reports from 2003-2005 and the 2006 Services Directive, already reviewed.

The result is a contradiction within Spanish and EU frameworks: self-employed workers are treated as natural persons for duties but as legal entities when it comes to fair remuneration, effectively denying their right to sufficient and proportional payment.

4. A Legislative Proposal for Resolving the Current Legislative Contradiction: Minimum Equivalent Fees.

4.1. The Concept and Calculation of Minimum Equivalent Fees.

The analysis reveals a contradiction within Spanish and EU frameworks arising from the abolition of minimum professional fees. To address it, this paper proposes a clear and simple solution: *restoring the equivalence between fees and salaries* established by the constitutional framework, European Charters, and Spanish legislation in force before 1997. That is the concept of Minimum Equivalent Fees (MEF).

This equivalence permits an objective calculation of MEF. Since the SMW and collectively agreed wages define salaried workers' rights through negotiation by social partners, equivalent values can be recalculated by applying the inverse procedure outlined in Decree 2512/1977. Schedule VIII of this Decree established that a salaried wage equalled fees a self-employed architect would earn minus the expenses borne in self-employment – such as professional liability insurance, social security contributions, operating expenses, and certification fees – normally covered by the employer in salaried work.

To eliminate discrimination, MEF must be calculated in reverse: starting from the SMW or relevant collectively agreed wage and adding expenses normally covered by employers but borne by self-employed workers (operating costs, social security contributions, paid leave, liability insurance, professional fees, certification costs, etc.). Thus, *the MEF* differ from former *Minimum Professional Fees*, which were set autonomously by professional associations. MEF are instead derived from salary values already negotiated between social partners and ratified under government supervision in labour matters.[22] Table 3 illustrates the calculation referring to Spain.

Table 3: Minimum Equivalent Fee (MEF) estimation for Spain 2024.

	Month	Year
Statutory minimum wage (2024, 14 payments)		€15.876,00/year (1)
Salary under the collective bargaining agreement for engineering companies and technical consultancy offices (2024, Architect, Group I Level 1)		€28.664,12/year (1)
Operational Costs:		
Liability insurance cost		€300.00/year
Workplace rent and expenses		€3,000.00/year
Software license costs		€3,939.00/year
Hardware		€1,000.00/year
Other running expenses		€1,130.00/year
Total operational cost by worker		€9,369.00/year
Social security cost:		
a) Statutory minimum wage		€5.239,08/year
b) Office Workers' Collective Agreement Wage		€9.459,16/year
MEF (based on statutory minimum wage)		€30.484,08/year
MEF (based on collective agreement)		€47.492,28/year
Annual working hours		1,760 hours
MEF per hour (based on statutory minimum wage)		€17,32/hour
MEF per hour (based on collective agreement)		€26,98/hour

[22] Unions preserve thus an important role in this model, making it compatible, e.g., with the Italian model.

Source: Author's own elaboration. Statutory minimum wage: *Real Decreto 145/2024, de 6 de febrero, por el que se fija el salario mínimo interprofesional para 2024* (BOE núm. 33, de 7 de febrero de 2024), art. 3.1. Collective agreement salary: *Resolución de 12 de marzo de 2024, de la Dirección General de Trabajo, por la que se registran y publican las tablas salariales para 2024 del XX Convenio colectivo nacional de empresas de ingeniería, oficinas de estudios técnicos, inspección, supervisión y control técnico y de calidad* (BOE núm. 73, de 23 de marzo de 2024), salary level 1: annual total, including the collective agreement supplement under art. 38. Note: linkage to the cost of living means that these values must be reviewed annually.

Additionally, Article 5.4 of Directive 2022/2041 sets indicative criteria for the minimum wage – 60% of the gross median wage or 50% of the gross average wage – which can also serve a reference for MEF calculation (*see* Table 4 below).

Table 4: MEF orientative values for Spain 2024.

	Month	**Year**
Orientative MEF:		
a) based on median gross wage	€2,001.40/month (1)	€24,016.80/year
b) based on mean gross wage	€2,385.60/month (1)	€28,627.20/year
Total operational costs & Social Security:		
a) based on median gross wage		€17,294.54/year
b) based on mean gross wage		€18,816.00/year
MEF:		
a) based on median gross wage		€41,311.34/year
b) based on mean gross wage		€47,443.20/year
Annual working hours		1,760 hours
MEF per hour:		
a) based on median gross wage		€23.47/hour
b) based on mean gross wage		€26.96/hour

Source: Author's own elaboration based on median and mean gross wage in Spain in 2024, taken from Instituto Nacional de Estadística (INE), *Decil de salarios del empleo principal*, Press Release, 14 November 2025, available at https://www.ine.es/dyngs/Prensa/dsEPA2024.htm (last accessed on 6 December 2025). Note: According to Article 5.5 of the Directive, the above values should be updated every 2 or 4 years.

As shown above, this calculation method ensures *MEF sufficiency* by setting the minimum wage as the remuneration floor, while *proportionality* to the quantity and quality of work derives from equivalence to applicable sectoral collective agreement rates. Notably, the proposed method resolves the existing contradiction *without introducing positive discrimination*, as it has no effect when self-employed workers already earn above the minimum or collectively agreed wage for equivalent work.

4.2. Compatibility of MEF with Freedom of Enterprise.

While the benefits of MEF have been outlined, a key objection from Spanish and European regulatory bodies remains that abolishing professional fees is essential for the proper functioning of the European market economy, as it *"encourages innovation, improves service quality and diversity, and ensures a better allocation of resources, strengthening growth and employment"*.[23] Moreover, according to the CNMC, minimum fees conflict with freedom of enterprise (Articles 38 CE, 16 CFREU, and 101 TFEU). This raises questions about the compatibility of the MEF proposal with current Spanish and EU frameworks.

Yet, although this view has long been promoted at the EU level, both legislation and case law leave room for minimum professional fees. The *Wouters judgment (C-309/99)* already held that "not every agreement restricting the parties' freedom of action necessarily falls within the prohibition of Article 85(1) of the Treaty… account must be taken of the overall context and, in particular, of its objectives, which here relate to the need to establish rules… It must then be assessed whether the resulting restrictions on competition are inherent in pursuing those objectives".[24]

This reasoning was formalized in Directive 2006/123/EC, whose Article 15(2-3) affirms that minimum fees are compatible with freedom of enterprise when they meet *necessity* and *proportionality* criteria. More recently, *Directive (EU) 2018/958* recognized the *disproportionate impact* of abolishing minimum fees and stated that their reintroduction to achieve *social policy objectives* constitutes *"necessity"* under Article 3(2) of Directive 2006/123/EC – therefore not conflicting with freedom of enterprise – while recent Commission Guidelines promoting collective agreements aimed at fair remuneration develop in a similar direction[25].

These legislative developments have been reflected in case law. The CJEU held in *Case C-94/04 and C-202/04* and later in *Case C-377/17* that EU Member States may establish *minimum fee scales* for reasons of general interest, provided such restrictions are not disproportionate to their objectives. Moreover, in *Case C-413/13*, the Court recognized that collective agreements setting minimum working conditions, even for dependent self-employed workers, may fall outside the scope of Article 101 TFEU.

It should be noted, however, that Case C-413/13 and the aforementioned Commission Guidelines operate on agreements between undertakings, falling within the scope of Article 101 TFEU, and that the scope of the exception recognised in *FNV Kunsten* remains subject to debate, while the Guidelines are binding on the Commission but not on the Member States or national courts. By contrast, the MEF proposed here would constitute a State

[23] Comisión Nacional de la Competencia, *Informe sobre los Colegios Profesionales tras la Transposición de la Directiva de Servicios*, 2012, available at https://www.cnmc.es/sites/default/files/1186019_7.pdf (last accessed on 6 December 2025). It should also be noted that a consultation on the proposal to create MEF in Spain received a negative assessment from the CNMC in 2022. *See* Alvira, R., *Solicitud a la Ministra de Trabajo y Economía Social para el Establecimiento de un Sistema de Honorarios Mínimos Profesionales*, 23 March 2021, and Ministerio de Asuntos Económicos y Transformación Digital (DGPOLECO), *Informe sobre la Solicitud de D. Ricardo Alvira Baeza en Materia de Honorarios Profesionales*, 10 February 2022, CSV 1471189-94538828 [DOI:10.5281/zenodo.20537545].
[24] Known as "Wouters test" or "inherent proportionality criterion" justifies certain competition restrictions when necessary to achieve legitimate public interest objectives.
[25] OJ C374/2, 2022.

measure, subject to the criteria of necessity and proportionality of Directive 2006/123/EC and to the case law on minimum fees already cited (Cases C-94/04, C-202/04 and C-377/17), and would offer legal certainty that the former avenue lacks.[26]

Lastly, Italy has enacted unchallenged legislation establishing minimum professional fees. Legge 247/2012 recognized the right to fair remuneration for lawyers working with major financial institutions and large corporations, emphasizing proportionality to the work's characteristics.[27] Legge 49/2023 substantially broadened this protection by: (1) mandating minimum fees for all intellectual professionals (lawyers, architects, engineers, etc.); (2) extending obligations to Public Administration and state-owned companies; and (3) defining equitable compensation as compliance with *ministerial parameters* set by decrees for each profession. Although these parameters follow differing methodologies and are not codified in Legge 49/2023 itself, the framework constitutes a *comprehensive statutory model* of minimum professional fees.

The above regulations and judgments show the compatibility with competition law of the proposed MEF. The *necessity* of MEF lies in eliminating current discrimination, while their *proportionality* derives from the proposed calculation procedure, which equates it to (without exceeding) wages agreed by social partners.

Regarding implementation, all data required to calculate MEFs are publicly available or held by public administrations. The process should be initiated by competent institutions (Ministry of Labour, Ministry of Finance, Social Security Treasury) with mandatory public consultation enabling professional organizations to submit observations within a statutory period. This approach aligns with transparency principles in Law 39/2015 and the participatory requirements of Directive 2022/2041.

4.3. Would Minimum Equivalent Fees Help Reduce In-Work Poverty?

Although assessing the impact of MEF on in-work poverty is beyond this article's scope, the persistently high in-work poverty rates among self-employed workers suggest that implementing MEF could help reverse this trend. The European Commission (IP/03/420) had already foreseen in 2003 that abolishing fee regulations would lower individual professional incomes but considered this acceptable given the expected gains in economic activity and competition.[28] This suggests that establishing *MEF* – that is, minimum professional fees equivalent to a living wage – would directly benefit those most affected by in-work poverty.

[26] Leist D., *Ensuring adequate remuneration for vulnerable solo self-employed through collective bargaining – EU antitrust prohibition as a limit?*, in *Italian Labour Law e-Journal* 18, 2, 2025, 159.
[27] Delfino M., *The proposal for an EU directive on adequate minimum wages and its impact on Italy*, in *Italian Labour Law e-Journal* 14, 1, 2021, 49.
[28] "Another conclusion is that countries with low degrees of regulation have relatively *lower revenues per professional*, but a proportionally higher number of practising professionals generating a relatively higher overall turnover" (emphasis added). *See* European Commission, *Commission Invites Comments on Regulation of Liberal Professions and Its Effects*, Press Release, IP/03/420, 21 March 2003, 2, available at: https://ec.europa.eu/commission/presscorner/detail/en/ip_03_420 (last accessed on 12 December 2025).

Furthermore, MEF implementation could have an indirect effect on salaried workers.[29] Higher self-employed incomes would strengthen employees' bargaining power of, since self-employment income serves as a lower bound (reservation wage) for accepting paid employment. Rational workers will not accept contracts offering less than what they could earn independently. As self-employment constitutes a viable alternative reservation wages rise, enhancing the capacity of workers to negotiate higher salaries.

Consequently, from both perspectives – self-employed and employed – the introduction of *Minimum Equivalent Fees* should contribute to reducing working-class poverty, a persistent concern of the European Union.

5. Conclusion.

The CJEU's recent judgment in *Case C-19/23*, which upholds most provisions of Directive 2022/2041 on adequate minimum wages, underscores the consolidation of the *principle of fair remuneration* within the European Union. It also brings to light an often-overlooked issue: the *structural asymmetry* that the construction of the EU as a *Single Market* has created in Spain – and in several other EU Member States – between salaried and self-employed workers.

The current frameworks for fundamental rights – specifically those concerning non-discrimination, adequate remuneration for work, and proportionality in regulatory provisions – underwent substantial development throughout the 20th century before taking their contemporary form. In Spain, the rights of self-employed and salaried workers evolved in parallel from the early 1900s century until the century's end. Among the consolidated rights is the principle that full-time work should provide sufficient remuneration to sustain a decent standard of living, and proportional to the quantity and quality of the work. In this regard, legislation governing Spanish architects between 1905 and 1997 established fee-salary equivalence to ensure that self-employed and salaried workers received comparable net income for equivalent work.

However, this equivalence was dismantled after Spain accession to the EEC, within the broader construction of the European single market from the 1990s. Legislation enacted from 1997 onward redefined self-employed workers as legal entities, "undertakings providers of services", thereby excluding them from remuneration rights granted to natural persons. This conceptual shift was applied selectively, mainly to justify removing their right to minimum fees, while other legislation continued to treat self-employed professionals as natural persons, even assigning them significant penal liabilities. The result is an *internal contradiction* within both the Spanish and European regulatory frameworks and a clear *discrimination* against self-employed workers compared with employees.

An analysis of the limited comparable data available from Spain, Italy, and the European Union confirms that this discrimination is reflected in practice. *Self-employed workers* earn lower

[29] According to Menegatti E., nt. (4), 626, "data confirms a consistent and uninterrupted growth in working poverty in Italy since 2008, which has affected not only precarious and atypical jobs but also standard employment. This demonstrates an objective difficulty for collective bargaining to support wage dynamics".

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annual incomes than salaried employees – often below collectively agreed wages – show higher rates of *in-work poverty*, and experience a *wider gender pay gap*, which disproportionately harms self-employed women. Finally, the evidence suggests *hidden age discrimination*, since *older workers*, often excluded from salaried employment, are *overrepresented among the self-employed*.

As a solution, this paper proposes the concept of *Minimum Equivalent Fees (MEF)*. This mechanism – simple to calculate and legally straightforward – sets *minimum hourly fees* based on the Statutory Minimum Wage (SMW) and collective agreement wages, plus the employer costs normally covered in salaried work. *MEF* comply with Directive 2006/123/EC, as they are justified by *necessity* (eliminating current discrimination against self-employed workers) and *proportionality* (ensuring net income equalization with collectively agreed minimum wages) in the terms specified in *Article 15.*

Implementing *MEF* would not only restore the *constitutional balance* between salaried and self-employed workers but also reaffirm the *EU's commitment* to *fair remuneration and non-discrimination* across all forms of labour. Moreover, MEF adoption would likely *strengthen workers' bargaining power* and contribute to *improving current wages*, thereby reducing the *high incidence of in-work poverty* observed in several EU Member States over the past two decades.

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