

Already compliant? Germany's (non-)implementation of the Adequate Minimum Wage Directive

Matthias Schmid*

1. Preliminary remarks 2. Germany's Minimum Wage Act 3. The statutory minimum wage:
Adjustments and recent developments 4. The (non-)implementation of the AMWD in
Germany 5. Some key questions remain unanswered 6. Article 4 AMWD in German Law
7. Final remarks

Abstract

This article analyses Germany's (non-)implementation of the Adequate Minimum Wage Directive (AMWD) in light of the government's claim that existing laws are already compliant. The analysis concludes that although the federal government is developing an action plan for social dialogue (Article 4(2) AMWD), the legislature has not made any structural changes to the Minimum Wage Act. Instead, the decisive changes have been made by the Minimum Wage Commission, which has updated its internal procedures. This passive approach leaves key questions unanswered regarding the legal nature and purpose of the minimum wage, particularly following the CJEU's judgment in Case C-19/23.

Keywords: Minimum Wage; German Minimum Wage Act; Mindestlohngesetz; Adequate Minimum Wage Directive; Living Wage; Collective Bargaining.

1. Preliminary remarks

The implementation of the Adequate Minimum Wage Directive (AMWD) in Germany cannot be described as a spectacular act. In fact, it is actually a one-pager. On October 23, 2024, it was published in the Federal Law Gazette (*Bundesgesetzblatt*) that the existing law in the Federal Republic of Germany already complies with the requirements of the AMWD.¹ Against this backdrop, this article examines whether Germany's (non-)implementation of the directive is sufficient. First, the existing regulations regarding statutory minimum wages in Germany and their recent developments will be explained (2. and 3.). Secondly, the reasons why Germany considers itself to be in compliance with the AMWD are outlined (4.). This will reveal that some key questions in German minimum wage legislation remain unanswered,

* Dr. jur., currently Legal Trainee (Referendar) at the Higher Regional Court of Cologne. This essay has been submitted to a double-blind peer review.

¹ See „Bekanntmachung zur Umsetzung der Richtlinie (EU) 2022/2401 des Europäischen Parlaments und des Rates vom 19. Oktober 2022 über angemessene Mindestlöhne in der Europäischen Union“, Bundesgesetzblatt 2024 I Nr. 313, 23.10.2024.

particularly following the judgment in C-19/23 (5.). Finally, the compatibility of German law with Article 4 of the AMWD will be examined briefly and some final conclusions will be drawn (6. and 7.).

2. Germanys Minimum Wage Act

The general statutory minimum wage in Germany is still relatively new compared to other EU-countries. After years of political debate, the Minimum Wage Act (*Mindestlohngesetz* or *MiLoG*) was introduced in 2014 and the minimum wage came into effect on January the 1st in 2015.² The statutory minimum wage applies to all employees, although the law provides exemptions³ under certain conditions, for example for internships, young workers or workers who were classed as long-term unemployed (Section 22 MiLoG). While the level of the minimum wage was initially set by law (at that time, € 8.50), the legislature decided to introduce an independent commission to propose future adjustments.

The Minimum Wage Commission (*Mindestlohnkommission*) was born (Section 1 Paragraph 2 MiLoG), consisting of three representatives each from the employee and employer sides (Section 4 and 5 MiLoG). Together both sides elect a joint chairman (Section 6 MiLoG). Each member has the right to vote, with the commission deciding by simple majority (Section 10 MiLoG). The commission is completed by two advisory members from the scientific community without a voting right (Section 7 MiLoG). The Minimum Wage Commission also adopts internal rules of procedure that regulate details of its working methods (Section 10 Paragraph 4 MiLoG, *Geschäftsordnung*). The Commission is required to submit a proposal for adjusting the minimum wage every two years (Section 9 MiLoG). The Federal Ministry of Labour and Social Affairs can adopt this proposal and make it legally binding by way of a statutory instrument, but it cannot change the proposed amount (Section 10 MiLoG). With the introduction of a commission model, the legislature pursued two objectives. First, the adjustment of the minimum wage was to be placed in the hands of social partners representatives, so that the minimum wage would not unduly infringe upon their collective bargaining autonomy.⁴ Second, the level of the minimum wage was to be kept out of political debate.⁵

The specifications for the actual adjustment can be found in the central provision of Section 9 Paragraph 2 MiLoG: “The Minimum Wage Commission examines, in the context of an overall assessment, which amount of the minimum wage can suitably contribute to

² Bundesgesetzblatt 2014 I Nr. 39, 15.8.2014. An English translation of the Minimum Wage Act is available here: https://www.gesetze-im-internet.de/englisch_milog/englisch_milog.html (last visited Dec. 11, 2025).

³ The term “exemption” is used here. It means that the law exempts some groups from the application of minimum wage rules, while “variations” mean that a specific minimum wage floor applies to specific groups, for instance a lower minimum wage applies to young workers. These terms are based on the definitions used by the Commission in the impact assessment on the Minimum Wage Directive, European Commission, Impact Assessment, SWD(2020) 245 final.

⁴ See, e.g. Giesen R., *Staatslohn statt Tariflohn Zur geplanten Einführung eines staatlichen Mindestlohns unter Ausschluss der Mindestlohnkommission*, in *Zeitschrift für Arbeitsrecht (ZfA)*, 2022, 346, 369.

⁵ Lakies T., Rödl F. in Däubler W. (eds), *Tarifvertragsgesetz*, 5. Ed., Nomos, Baden Baden, 2022, § 5 TVG Annex 1 para. 181.

providing workers with an appropriate minimum level of protection, to enabling fair and effective conditions of competition, and to not jeopardising employment. When setting the minimum wage the Minimum Wage Commission is subsequently guided by collective wage developments.” Further details regarding the adjustment are laid down in the Commission’s internal rules of procedure. In particular, it was stipulated that the Commission would follow the collective wage developments in its decision and could only deviate from this with a 2/3 majority. In January 2025, the Commission also amended its rules of procedure in light of the AMWD (see below under 4.).

3. The statutory minimum wage: Adjustments and recent developments

In the years following the introduction of the Minimum Wage Act, the above-described procedure worked quite well. The minimum wage always increased gradually according to the Commission’s proposals.⁶ Moreover, these proposals were always made by consensus in the commission. Those parameters changed in 2022, when the German legislator raised the minimum wage from € 10,45 to € 12 through changing the law⁷ after it had been a main promise from the Social Democrat Party (*SPD*) in the election campaign 2021. This intervention conflicted with the original concept of keeping the minimum wage out of the political debate and therefore was criticized for political and legal reasons.⁸ The legislature intended a “one-time increase” and after that, the Commission should continue and decide on future adjustments.⁹ In an explanatory memorandum the legislature justified this increase by stating that this represents a legal development whereby the aspect of social participation will be given greater consideration when determining the minimum wage in the future.¹⁰ After this intervention by the legislature, the Minimum Wage Commission was unable to reach a consensus on adjusting the minimum wage at the end of 2023. While a moderate increase was decided upon with the votes of the employers and the chairperson, the employee side criticized it as insufficient.¹¹ In addition to these developments, the AMWD came into force in 2022, raising the question about its implementation until November 2024 (Article 17(1) AMWD).

⁶ For information on the evolution of the German minimum wage, see: Mindestlohnkommission, *Evolution of the minimum wage*, <https://www.mindestlohn-kommission.de/en/Information-on-the-minimum-wage/Evolution-of-the-minimum-wage> (last visited Dec. 11, 2025).

⁷ Bundesgesetzblatt 2022 I Nr. 22, 30.06.2022.

⁸ See, e.g. the criticism by Giesen R., *Staatslohn statt Tariflohn Zur geplanten Einführung eines staatlichen Mindestlohns unter Ausschluss der Mindestlohnkommission*, in *Zeitschrift für Arbeitsrecht (ZfA)*, 2022, 346 – 375.

⁹ BT-Drucks. 20/1408, 2, 17 – 19.

¹⁰ BT-Drucks. 20/1408, 2, 17.

¹¹ See: Mindestlohnkommission, *Fourth decision of the Minimum Wage Commission*, 26.06.2023: https://www.mindestlohn-kommission.de/en/Minimum-Wage-Commission/Adjustment-decisions-of-the-Minimum-Wage-Commission/adjustment-decisions-of-the-minimum-wage-commission_node (last visited Dec. 11, 2025).

4. The (non-)implementation of the AMWD in Germany

First, it should be noted that German law already largely complies with the AMWD.¹² The commission is composed of representatives of the social partners, makes decisions at regular intervals and can seek opinions from science or from the social partners before making a decision. Taking that in consideration, the Minimum Wage Act already complies with Article 5(5) and (6) as well as Article 7 of the AMWD. Furthermore, there is a customs authority (*Finanzkontrolle Schwarzarbeit*) that monitors compliance with the minimum wage and has extensive powers of inspection, thus ensuring effective access for workers to the statutory minimum wages (Article 8 AMWD). Information on the minimum wage¹³ and generally binding collective agreements¹⁴ are widely available (Article 11 AMWD). Also, the German legislature apparently assumes that the previously mentioned exemptions to the minimum wage (Section 22 MiLoG, see above (2).) do not contradict the AMWD.

However, the most interesting point of discussion is the key question regarding the adjustment criteria and the reference values in Article 5 AMWD. As shown above (2.), the Minimum Wage Commission is subsequently guided by collective wage development when setting the minimum wage (Section 9 Paragraph 2 MiLoG). This immediately raised the question of how the criteria and reference values mentioned in Article 5 AMWD can be considered when setting the minimum wage. Given that there was no political majority for an amendment to the Minimum Wage Act, political pressure was placed on the Minimum Wage Commission. Former Minister of Labour and Social Affairs *Heil* informed the Minimum Wage Commission in a letter in September 2024 that existing German law is considered compliant with the AMWD and will be reported as such to the EU Commission.¹⁵ He explicitly requested the Minimum Wage Commission to consider the European reference value of 60 percent of the gross median wage and the criteria in Article 5 AMWD in all future decisions to ensure adequate minimum protection.¹⁶ At the beginning of 2025, the Minimum Wage Commission amended its rules of procedure and included the criteria from Article 5(2) AMWD and the reference value mentioned in Article 5(4) AMWD as decision criteria, in addition to the development of collectively agreed wages.¹⁷ Based on this, in summer 2025

¹² For detailed information on the discussion regarding the implementation of the AMWD in Germany, see Schlachter M., *Germany*, Chapter 29 in Ratti L., Brameshuber E., Pietrogiovanni V. (eds), *The EU Directive On Adequate Minimum Wages*, Bloomsbury Publishing, London, 2024, 427 – 442; Brameshuber E., Schmid M., *Mindestlöhne*, Chapter 13, in Preis U., Sagan A. (eds), *Europäisches Arbeitsrecht*, Otto-Schmidt-Verlag, Cologne, 2024, 13.1 – 13.118.

¹³ E.g. on the website of the Minimum Wage Commission.

¹⁴ The declaration of universal application and the revocation of universal application require public notification, Section 5 Paragraph 7 of the German Collective Agreements Act (“Tarifvertragsgesetz”).

¹⁵ This letter has not been officially published. It is broadly available, for example on a employer’s association website:

https://www.agvnord.de/fileadmin/meinarbeitgeberverband/Wirtschaft-und-Statistik/Brief_Bundesminister_Hubertus_Heil_Mindestlohnkommission_September_2024.pdf (last visited Dec. 11, 2025). Regarding this letter, see: Franzen M., „Heil will 15 Euro Mindestlohn – Mahnbrief des Ministers an Mindestlohnkommission“, in *Europäische Zeitschrift für Arbeitsrecht (EuZA)*, 2024, 361 – 362.

¹⁶ Id.

¹⁷ See “Geschäftsordnung Mindestlohnkommission”:

https://www.mindestlohn-kommission.de/de/Mindestlohnkommission/Gesetzlicher-Auftrag/gesetzlicher-auftrag_node (last visited Dec. 11, 2025).

the Commission proposed increasing the minimum wage from € 12.82 to € 13.90 on the 1st of January, 2026, and to € 14.60 on the 1st of January, 2027.¹⁸ The Federal Ministry of Labour and Social Affairs already made the proposal legally binding.¹⁹

5. Some key questions remain unanswered

As has been shown, the most decisive changes in response to the AMWD were made by the Minimum Wage Commission. Nevertheless, some key questions remain unanswered, which can only be touched upon here. The most obvious question is about the fate of the criteria in Article 5(2) AMWD following decision in C-19/23, since the justification for taking these criteria into account has been eliminated with the annulment.²⁰ There is also ongoing debate as to whether it should be the legislature itself, rather than the Minimum Wage Commission, that decides on a reference value and uses it to guide the assessment of adequacy of statutory minimum wages.²¹

In addition to these questions, there is a much more fundamental question about the legal nature of the minimum wage in Germany. The background is that the statutory minimum wage was only designed as a “safety net at the bottom” when it was introduced, intended to prevent inappropriately low wages.²² Recent developments – specifically the increase by the legislature to € 12 in 2022 and its legal justification, the adjustment of the rules of procedure of the Minimum Wage Commission and the AMWD itself – bring more of a “living wage approach” into the Minimum Wage Act. Consequently, the recent minimum wage adjustments deviated to a certain extent from the original idea of following the development of collectively agreed wages (Section 9 Paragraph 2 MiLoG), although the law itself has not changed. *Picker* therefore recently concluded that the decided minimum wage increases for 2026 and 2027 were invalid. He argued, among other reasons, the legislator must make key decisions itself and may not delegate them to the Minimum Wage Commission.²³ The argumentation in detail would go beyond the scope of this discussion. However, it merely illustrates the legal uncertainty, which is likely to be exacerbated by the omission of the German legislature and by the partial annulment of the AMWD in C-19/23. Finally, the question regarding the scope of personal application (Section 22 MiLoG) remains. While in my opinion Article 6 AMWD does not prohibit exemptions to the minimum wage,²⁴ this

¹⁸ See: Mindestlohnkommission, *Fifth decision of the Minimum Wage Commission*, 27.06.2025, https://www.mindestlohn-kommission.de/en/Minimum-Wage-Commission/Adjustment-decisions-of-the-Minimum-Wage-Commission/adjustment-decisions-of-the-minimum-wage-commission_node (last visited Dec. 11, 2025).

¹⁹ Bundesgesetzblatt I Nr. 268, 7.11.2025.

²⁰ CJEU judgment of 11 November 2025, C-19/23, *Denmark v. Parliament and Council*, para. 94 – 95.

²¹ Klein T., Lentz F., *EU-Mindestlohnrichtlinie: Kein Umsetzungsbedarf in Deutschland? (Teil II)*, in *Zeitschrift für Europäisches Arbeits- und Sozialrecht (ZESAR)*, 2025, 160, 164; Picker C., *Funktionalität des gesetzlichen Mindestlohns*, in *Recht der Arbeit (RdA)*, 2025, 269, 283 – 284.

²² BT-Drucks. 18/1558, 28.

²³ See Picker C., *Funktionalität des gesetzlichen Mindestlohns*, in *Recht der Arbeit (RdA)*, 2025, 269 – 287.

²⁴ For a detailed discussion, see Schmid M., *Europäischer Mindestlohn*, Nomos, Baden-Baden, 2025, 447 – 469; Brameshuber E., Schmid M., *Mindestlöhne*, Chapter 13 in Preis U., Sagan A. (eds), *Europäisches Arbeitsrecht*, Otto-Schmidt-Verlag, Cologne, 2024, 13.71 – 13.88.

does not reflect the prevailing opinion in Germany. Many scholars question the compatibility of the exemptions in Section 22 MiLoG with Article 6 AMWD and see the necessity to introduce at least a different rate of statutory minimum wage for those groups.²⁵

6. Article 4 AMWD in German Law

In contrast to Article 5 AMWD, the compatibility of German law with Article 4 AMWD is less controversial. Overall, Germany has a functioning social dialogue, which should comply with the requirements of Article 4(1) AMWD.²⁶ In addition, Germany is a Member State in which the collective bargaining coverage rate is less than a threshold of 80%.²⁷ Germany will therefore present a framework of enabling conditions for collective bargaining (Article 4(2) AMWD). This action plan will be adopted by the Federal Government (*Bundesregierung*) and is to be submitted to the European Commission by the end of 2025.²⁸ In this action plan, the *Bundesregierung* is expected to address recent legislative initiatives to promote collective bargaining such as the proposed law that establishes compliance with collective agreements as a prerequisite for the fulfilment of a public contract.²⁹

7. Final remarks

In summary, it can be said that the German legislature has not initiated any legislative changes to implement the AMWD. Only the federal government is working on a national action plan to comply with Article 4(2) AMWD. The most decisive changes considering the AMWD were made by the Minimum Wage Commission, which updated its internal procedure. Some key questions like the fate of the annulled criteria (Article 5(2) AMWD), the question who must choose a reference value (Article 5(4) AMWD) and the personal scope of the minimum wage are currently discussed. Nevertheless, it is not to be expected

²⁵ See the following scholars emphasizing the need for legislative change in the personal scope of the minimum wage: Kovács E.: *Europäische Mindestlohnrichtlinie – Kriterien, Kompetenzen und Umsetzung*, in *Soziales Recht (SR)* 2023, 70, 78–79; Sagan A., *Der Arbeitnehmerbegriff: Rechtspolitische Perspektiven im europäischen Mehrebenensystem*, in *Neue Zeitschrift für Arbeitsrecht (NZAr)*, 2024, 1087, 1092; Krause R., *Abgestufter personaler Schutz*, in *Neue Juristische Wochenschrift (NJW)*, 2024, 2719, 2723; Kocher E., *Anwendungsbereich des Arbeitsrechts: Anpassungsbedarfe im deutschen Recht aus unionsrechtlicher Sicht*, in *Neue Zeitschrift für Arbeitsrecht-Rechtsprechungs-Report (NZAr-RR)*, 2024, 449, 452.

²⁶ For a detailed discussion, see Franzen M., *Die EU-Mindestlohnrichtlinie 2022/2041*, in *Europäische Zeitschrift für Arbeitsrecht (EuZA)*, 2024, 3, 14 – 19; Brameshuber E., Schmid M., *Mindestlöhne*, Chapter 13 in Preis U., Sagan A. (eds), *Europäisches Arbeitsrecht*, Otto-Schmidt-Verlag, Cologne, 2024, 13.106 – 13.109.

²⁷ Although the exact rate is difficult to measure, there is consensus that it is below the threshold. See e.g. the website of the Federal Statistical Office of Germany:

<https://www.destatis.de/DE/Themen/Arbeit/Arbeitsmarkt/Qualitaet-Arbeit/Dimension-5/tarifbindung-arbeitnehmer.html> (last visited Dec. 11, 2025).

²⁸ See the announcement of the Federal Ministry of Labour and Social Affairs, Nationaler Aktionsplan zur Förderung von Tarifverhandlungen:

<https://www.bmas.de/DE/Arbeit/Arbeitsrecht/Aktionsplan-Tarifverhandlungen/aktionsplan-tarifverhandlungen.html> (last visited Dec. 11, 2025).

²⁹ See “Geszentwurf der Bundesregierung - Tariftrueugesetz”, BT-Drucks. 21/1941.

that the legislator will make any amendments to the Minimum Wage Act in the near future. This could change rapidly if a court decides to annul the recent adjustments for 2026 and 2027, as *Picker* has recently suggested. Overall, the situation is more complicated than the “one-pager” mentioned at the beginning suggests.

Bibliography

- Brameshuber E., Schmid M., *Mindestlöhne*, Chapter 13 in Preis U., Sagan A. (eds), *Europäisches Arbeitsrecht*, Otto-Schmidt-Verlag, Cologne, 2024;
- Franzen M., *Die EU-Mindestlohnrichtlinie 2022/2041*, in *Europäische Zeitschrift für Arbeitsrecht (EuZA)*, 2024, 3;
- Franzen M., „Heil will 15 Euro Mindestlohn – Mahnbrief des Ministers an Mindestlohnkommission“, in *Europäische Zeitschrift für Arbeitsrecht (EuZA)*, 2024, 361;
- Giesen R., *Staatslohn statt Tariflohn Zur geplanten Einführung eines staatlichen Mindestlohns unter Ausschluss der Mindestlohnkommission*, in *Zeitschrift für Arbeitsrecht (ZfA)*, 2022, 346;
- Klein T., Lentjes F., *EU-Mindestlohnrichtlinie: Kein Umsetzungsbedarf in Deutschland? (Teil II)*, in *Zeitschrift für Europäisches Arbeits- und Sozialrecht (ZESAR)*, 2025, 160;
- Kocher E., *Anwendungsbereich des Arbeitsrechts: Anpassungsbedarfe im deutschen Recht aus unionsrechtlicher Sicht*, in *Neue Zeitschrift für Arbeitsrecht-Rechtsprechungs-Report (NZAR-RR)*, 2024, 449;
- Kovács E.: *Europäische Mindestlohnrichtlinie – Kriterien, Kompetenzen und Umsetzung*, in *Soziales Recht (SR)* 2023, 70;
- Krause R., *Abgestufter personaler Schutz*, in *Neue Juristische Wochenschrift (NJW)*, 2024, 2719;
- Lakies T., Rödl F., § 5 TVG Annex 1, in Däubler W. (eds), *Tarifvertragsgesetz*, 5. Ed., Nomos, Baden-Baden, 2022;
- Picker C., *Funktionalität des gesetzlichen Mindestlohns*, in *Recht der Arbeit (RdA)*, 2025, 269;
- Sagan A., *Der Arbeitnehmerbegriff: Rechtspolitische Perspektiven im europäischen Mehrebenensystem*, in *Neue Zeitschrift für Arbeitsrecht (NZAR)*, 2024, 1087;
- Schlachter M., *Germany*, Chapter 29 in Ratti L., Brameshuber E., Pietrogiovanni V. (eds), *The EU Directive On Adequate Minimum Wages*, Bloomsbury Publishing, London, 2024, 427;

Copyright © 2025 Matthias Schmid. This article is released under a Creative Commons Attribution 4.0 International License