
The EU Minimum Wage Directive – Implementation in Sweden post C-19/23

Niklas Selberg*

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Abstract

The contribution focuses on the transposition of the EU Minimum Wage Directive into Swedish law.

Keywords: EU Minimum Wage Directive; Sweden; Transposition; Labour Law; Trade Unionism; Collective Bargaining; Collective Agreement.

1. Introduction.

Statutory provisions on wages have consistently been rejected in Swedish labour law. When the issue of minimum wages was raised within the EU during the 2020s, Swedish politicians and both labour market parties acted emphatically against the Union adopting

* Professor of Private Law, Linnæus University, Sweden. This essay has been submitted to a double-blind peer review.

such rules, opposing it on political grounds while also arguing that this action would fall outside of the competence of the EU.¹ However, this resistance was overcome in the Union's political processes, and Directive (EU) 2022/2041 on adequate minimum wages in the European Union was adopted by the European Parliament and the Council on 19 October 2022.²

According to Article 288 of the Treaty on the Functioning of the European Union (TFEU), a directive shall, as regards the result to be achieved, be binding upon each Member State to which it is addressed, but shall leave to the national authorities the choice of form and methods for its implementation.

In Sweden, a government inquiry was tasked³ with proposing measures for the implementation of the Minimum Wage Directive.⁴ For Sweden, it is Chapter 1 (Articles 1–4) and Chapter 3 (Articles 9–14) of the Directive that must be transposed into the national legal order.

On 18 January 2023, Denmark brought an action before the Court of Justice of the European Union seeking annulment of the Minimum Wage Directive, arguing that its adoption disregarded Article 153(5) TFEU.⁵ On 26 May 2023, Sweden was permitted to intervene in support of Denmark's claims. Advocate General Nicholas Emiliou's Opinion was delivered on 14 January 2025.⁶

On 11 November 2025, the Court of Justice handed down its judgment, partially annulling the Directive.⁷

In this article, I describe and discuss the Swedish implementation of the Minimum Wage Directive.

2. Implementing a Directive through a “Model for Wage Formation”.

The purpose of the Minimum Wage Directive (Article 1(1)), insofar as it is relevant for Sweden, is to improve living and working conditions in the Union, particularly the adequacy of minimum wages for workers, in order to contribute to upward social convergence and reduce wage inequality. Against this background, the Directive establishes a framework to achieve two objectives (Article 1(1)(b)-(c)): to promote collective bargaining on wage setting and to improve workers' effective access to the right to minimum wage protection where

¹ See on the Directive from the Swedish perspective, Selberg N., Sjödin E., *The Directive (EU) 2022/2041 on adequate minimum wages in the European Union: Much ado about nothing in Sweden?*, in *European Labour Law Journal*, 15, 4, 2024, 939-946; Herzfeld Olsson P., Søsted Hemme M., *Scandinavian states*, in Ratti L., Brameshuber E., Pietrogiovanni V. (eds), *The EU directive on adequate minimum wages. Context, commentary and trajectories*, Hart Publishing, Oxford, 2024, 517-541.

² O.J. L 275, 25.10.2022, 33-47. Hereinafter referred to as the *Minimum Wage Directive* or the *Directive*.

³ Dir 2022:140 Genomförande av direktivet om tillräckliga minimilöner. Beslutade vid regeringssammanträde den 15 december 2022.

⁴ SOU 2023:36 Genomförande av minimilönedirektivet. Betänkande av utredningen om genomförande av minimilönedirektivet. Finalised in June of 2023. Hereinafter referred to as SOU 2023:36.

⁵ Case C-19/23, *Kingdom of Denmark v European Parliament and Council of the European Union*, Judgment of the Court (Grand Chamber), 11 November 2025, ECLI:EU:C:2025:865.

⁶ Opinion of Advocate General Emiliou in Case C-19/23, 14 January 2025, ECLI:EU:C:2025:11.

⁷ C-19/23, nt. (5).

this is provided for in national law and/or results from collective agreements. The Directive shall (Article 1(2)) not affect the full respect for the autonomy of the social partners or their right to negotiate and conclude collective agreements.

The Swedish implementation measures are based on the fundamental premise described in the domestic *travaux préparatoires* that the Directive does not entail any new individual rights or obligations and that the Directive does not require from Swedish law the existence of individual rights or obligations linked to the measures implementing the Directive. The Directive's objective of providing minimum wage protection is thus said to be implemented through the Swedish model for wage formation.⁸

In legal terms, the Swedish model for wage formation is characterised by the following elements:

- Protection vis-à-vis the employer for workers' right to organise (freedom of association). Measures infringing this right, such as dismissals, are invalid and give rise to liability for damages, including punitive damages.⁹ A particularly strong protection of freedom of association applies to elected trade union representatives.¹⁰
- Protection vis-à-vis the State for the right to form and operate trade unions, and the right to take industrial action in the labour market.¹¹
- Trade unions have the right to negotiate with the employer. Refusal to negotiate gives rise to liability for damages, including punitive damages.¹²
- A broad scope for the right to take industrial action in the absence of a collective agreement, as well as a broad scope for trade unions to take sympathy action on behalf of other trade unions in their disputes with their respective employers. However, a peace obligation applies when the employer has concluded a collective agreement.¹³
- Swedish labour law provides a broad scope for the collective institutional labour market parties – trade unions and employers' organisations – to derogate from legislation, also to the detriment of employees (i.e. in *pejus*). In the form of a collective agreement, the parties may thus depart from otherwise mandatory legislation. The labour market parties therefore have many issues to bargain about, negotiate, and compromise on, and can give and take across a wide range of matters.¹⁴ The scope for collective bargaining is greater at central level.
- The parties to a collective agreement are responsible for realising the rights conferred by the agreement.
- There is no group of employees whose wages cannot be regulated by a collective agreement.

⁸ SOU 2023:36, 55.

⁹ Sections 8-10 of the Swedish Co-Determination Act (1976:580).

¹⁰ Act on Trade Union Representatives' Status at the Workplace (1974:358).

¹¹ Ch. 2, Sections 1 and 14 of the Swedish Instrument of Government (1974:152).

¹² Section 10 of the Swedish Co-Determination Act (1976:580).

¹³ Sections 41-44 of the Swedish Co-Determination Act (1976:580).

¹⁴ Fahlbeck R., *Derogation from Labour Law Statutes under Swedish Law*, in *Juridisk tidskrift*, 7, 2006, 42 ff.

Taken together, these factors create incentives for both parties to conclude collective agreements, which usually and regularly include provisions on wages, and often on minimum wages. The rules further have the effect of centralising labour market relations and focusing them on national sectoral collective bargaining parties. Individual employers and employers' organisations perceive that they have some incentive to conclude collective agreements. In sum, this is the Swedish model that implements the Minimum Wage Directive.

Support for the idea that a "model" for labour market regulation can be invoked as an implementation measure for a directive is found in the preamble to the Minimum Wage Directive. Reference is made to recital 12, which emphasises that the different national traditions in the Member States for minimum wage protection should be respected. Also, recital 19 states that the Directive does not aim to establish a uniform method for setting minimum wages. Recital 19 further explains that the Directive does not encroach upon Sweden's freedom to promote access to minimum wage protection through collective agreements, in accordance with existing labour law and its specific characteristics, and with full respect for national competences and the social partners' right to conclude agreements. The Directive does not, according to recital 19, set any specific wage level as adequate, since this falls within the labour market parties' right to conclude agreements at national level, and the relevant competence of the Member States. Nor is Sweden required to create a mechanism for declaring collective agreements universally applicable (*erga omnes*). These statements have been foundational for Sweden's position that the Swedish model can implement the Minimum Wage Directive. Reference is also made to recital 13, which gives a positive view of Member States that primarily set wages through collective agreements – this protection is considered adequate for workers in low-paid occupations, and such a system is deemed effective in reducing in-work poverty. Further support for the view that the Swedish model can be said to reflect, or have already implemented, the Minimum Wage Directive is found in recital 16, which emphasises that collective bargaining at national or sectoral level is particularly effective in ensuring effective protection of minimum wages. Finally, Sweden invokes Article 16 of the Minimum Wage Directive (and recital 38), which states that the implementation of the Directive does not constitute valid reason for lowering the general level of protection for workers, particularly regarding minimum wage protection, in Sweden.

In sum, the wording of the Minimum Wage Directive highlights the importance of respecting national specificities, expresses appreciation for collective agreement systems for wage formation (see also recitals 22–24), and prohibits reductions in protection levels for workers. These points are invoked by Sweden as support for the position that the preexisting Swedish labour law and the Swedish model for regulating the labour market can be said to meet the requirements of the Directive.

3. The Directive's view on jurisdictions without a statutory minimum wage: what does the directive not require of Sweden?

The Minimum Wage Directive has an essentially positive view of Member States that lack a statutory minimum wage. Furthermore, recital 25 emphasises that Member States where

collective bargaining coverage is high tend to have a small proportion of low-wage workers and high minimum wages. This statement is a direct reference to Sweden.

Against this background, it is clear that the Directive does not require several things from Sweden. First, Sweden's choice to promote access to minimum wage protection through collective agreements is not affected (Article 1(3)). Nor is the right to collective bargaining affected (Article 1(4)), and no obligation is created either to introduce a statutory minimum wage or to establish a system for declaring collective agreements universally applicable (*erga omnes*).

4. Outcome of the Swedish Model: Collective agreement coverage and wage levels.

In Sweden, both the collective agreement coverage rate and wage levels are high. The information provided by the government agency The Swedish National Mediation Office (*Medlingsinstitutet*) to the European Commission in accordance with Article 10 of the Minimum Wage Directive contains the most up-to-date data.¹⁵ It explains that there are more than 600 sectoral collective agreements on wages in Sweden and that minimum wages are regulated differently in each agreement for different categories of employees. Most often, minimum wages are entry-level wages for young, inexperienced employees. The report highlights the following regarding Swedish minimum wages:

The collective agreement coverage rate for 2022 and 2023 was 88 per cent: 92 per cent in blue-collar occupations and 84 per cent in white-collar occupations. In the large Swedish public sector, the collective agreement coverage rate is 100 per cent. In the smallest companies (1–9 employees), collective bargaining coverage is significantly lower than among employees in larger organisations. In 2023, 44 per cent of all employees in such companies, referred to as micro enterprises, worked in workplaces with collective agreements. Among the largest organisations, the coverage rate was 99 per cent in both 2022 and 2023.

In the categories Wholesale and Retail Trade (lowest pay rate in CBA for 20-year-olds = SEK 24,258) and Administrative and Support Service Activities (lowest pay rate in CBA for 20-year-olds = SEK 23,444), a larger proportion of women than men have a wage at the lowest pay rate. In 2023, the proportion covered by the lowest pay rate in both industries was around 15 per cent among women and around 9 per cent among men. In the categories Human Health and Social Work Activities, Accommodation and Food Service Activities and Education, the differences between the two genders are small in terms of the proportion covered by the lowest pay rate. In all industries, the proportion covered by the lowest pay rate is higher in the youngest age group (aged 20–29) compared with older age groups.

The median wage for employees covered by collective agreements is slightly lower overall than for employees not covered by collective agreements. In 2023, the median wage for all employees with collective agreements was SEK 35,300. For all employees without collective agreements, it was SEK 39,500. This is because the level of wages for certain groups of white-

¹⁵ Medlingsinstitutet, Reg. No 2025/6, Rapportering avseende Sverige enligt artikel 10 i Europaparlamentets och rådets direktiv (EU) 2022/2041 av den 19 oktober 2022 om tillräckliga minimilöner i Europa, 30 september 2025.

collar workers is higher for workers without collective agreements than for those with collective agreements. This higher level of wages in absence of collective agreements may be because these wages often include amounts that are otherwise included in collective agreements, such as pension and insurance premiums. In addition, very few white-collar workers have a level of wages that is relevant from the perspective of the Minimum Wage Directive. In 2023, the median wage for employees in blue-collar occupations with collective agreements was SEK 30,900. For employees in blue-collar occupations without collective agreements, it was SEK 29,100.

5. How to promote collective bargaining on wage setting.

The most important obligation created by the Minimum Wage Directive for Member States without a statutory minimum wage concerns the promotion of collective bargaining (Article 4(1)): In order to increase collective bargaining coverage and facilitate the exercise of the right to collective bargaining on wage setting, Member States shall, with the participation of the social partners and in accordance with national law and practice, implement a number of measures (points (a)–(d) in Article 4(1)).¹⁶

The first requirement concerns promoting the development and strengthening of the social partners' capacity to conduct collective bargaining on wage setting, particularly at sectoral or cross-industry level. The government inquiry assumes that the subsequent points (b)–(d) largely overlap with this point. Furthermore, the inquiry considers that the Swedish labour market model already fulfils this requirement by providing good conditions for the social partners to conduct collective bargaining, that the parties already have a strong position and capacity within the system, that Swedish collective labour law provides clear and appropriate frameworks for collective bargaining, that several elements of collective labour law specifically promote centralised collective bargaining, that a government agency – the Swedish National Mediation Office – facilitates negotiations and, in summary, that no measures need to be taken pursuant to Article 4(1)(a).

The second requirement concerns promoting constructive, meaningful and well-informed wage negotiations between the social partners on equal terms, where both parties have access to appropriate information to perform their tasks in connection with collective bargaining on wage setting (Article 4(1)(b)). The government inquiry on the implementation of the Minimum Wage Directive highlights the mediation in labour disputes for which the Swedish National Mediation Office is responsible¹⁷, as well as the obligation of employers to inform trade unions, whether or not they have a collective agreement, about their operations, and the duty to produce documents (the party invoking a written document during negotiations must provide it to the other party).¹⁸ Furthermore, both the Swedish National Mediation Office and the National Institute of Economic Research (*Konjunkturinstitutet*) produce

¹⁶ SOU 2023:36, Ch. 3 and Ch. 5.

¹⁷ SOU 2023:36, 66 ff., Section 46 of the Swedish Co-Determination Act (1976:580).

¹⁸ Sections 18–20 of the Swedish Co-Determination Act (1976:580).

nuanced and qualified information on wage formation in Sweden.¹⁹ Against this background, the assessment is that no implementation measures are needed pursuant to Article 4(1)(b).

The third requirement concerns taking appropriate measures to protect the exercise of the right to collective bargaining on wage setting and to protect workers and trade union representatives against actions that discriminate against them in relation to their employment because they participate or wish to participate in collective bargaining on wage setting (Article 4(1)(c)). With reference to the protection of positive freedom of association and the protection of trade union representatives, it is assumed that no implementation measures are needed pursuant to Article 4(1)(c). Freedom of association means, according to Section 7 of the Swedish Co-Determination Act (1976:580), the right for employers and employees to belong to an employers' or workers' organisation, to exercise membership rights and to work for the organisation or for its formation. An unlawful infringement of freedom of association exists under Section 8 of the same Act if someone on the employers' or employees' side takes action to the detriment of someone on the other side because that person has exercised their freedom of association or if someone on one side takes action against someone on the other side with the aim of persuading them not to exercise their freedom of association. Acts infringing freedom of association are invalid. Violations of freedom of association are sanctioned with economic and punitive damages under Sections 54–55 of the Swedish Co-Determination Act (1976:580). The Act on Trade Union Representatives' Status at the Workplace (1974:358) provides extensive protection to an employee appointed to represent the workers' organisation in negotiations with the employer. A trade union representative may not be prevented from performing their duties (Section 3), the representative's terms of employment are protected against deterioration (Section 4), and they are also entitled to the leave reasonably required to carry out their duties (Section 6). Breaches of the Act on Trade Union Representatives' Status at the Workplace are sanctioned with economic and punitive damages (Section 10). In sum, no measures are required to implement Article 4(1)(c) of the Minimum Wage Directive in Swedish law.

The fourth requirement concerns taking appropriate measures to promote collective bargaining on wage setting, to protect workers' and employers' organisations that participate, or wish to participate, in collective bargaining against the interference by the other party or its representatives or members, in their organisation's functioning or administration. The government inquiry proposing national implementation measures under the Directive highlights several aspects of Swedish collective labour law as the basis for its conclusion that no legislative amendments are required pursuant to Article 4(1)(d) of the Directive. According to Section 8, second paragraph of the Swedish Co-Determination Act (1976:580), organisations on the labour market enjoy indirect protection: an employers' or workers' organisation is not obliged to tolerate such infringement of freedom of association that constitutes an interference in its activities. This means that violations of individual employees' or employers' freedom of association may also constitute an interference with the respective organisation's freedom of association. Damages may therefore be claimed by both the individual, and the organisation. Furthermore, the general system of protection

¹⁹ SOU 2023:36, 67.

against acts infringing freedom of association also applies and is cited as a national implementation measure of Article 4(1)(c). Finally, labour market parties' organisations determine themselves how and by whom they are represented in negotiations – refusing to negotiate with or inform the person appointed by the other party constitutes an infringement of freedom of association subject to damages.²⁰ Consequently, no implementation measures are proposed pursuant to Article 4(1)(d).

It has not occurred to the Swedish legislator that Article 4(1)(d) would constitute a requirement for protection against yellow trade unions. Protection against yellow trade unions appears underdeveloped in Swedish law.²¹

6. The personal scope of the Minimum Wage Directive: an underestimated issue?

The personal scope of the Minimum Wage Directive is laid down in Article 2 in terms of workers in the Union who have an employment contract or an employment relationship as defined by applicable law, collective agreements or practice in the relevant Member State, taking into account the case-law of the Court of Justice of the European Union. Recital 21 elaborates on the Directive's personal scope.

Provided they meet these criteria, employees in both the private and public sectors, as well as domestic workers, on-demand workers, intermittent workers, voucher-based workers, platform workers, trainees, apprentices and other workers with atypical employment, as well as bogus self-employed persons and undeclared workers, may fall within the scope of this Directive.

Genuine self-employed persons should not fall within the scope of this Directive because they do not meet these criteria. Abuse of self-employed status, as defined in national law, either domestically or across borders, is a form of misclassification of work often associated with undeclared work. Bogus self-employment occurs when a person is classified as self-employed but in reality meets conditions typical of an employment relationship, with the aim of avoiding certain legal obligations or obligations to pay taxes and contributions. Such persons should fall within the scope of this Directive.

The determination of whether an employment relationship exists is based on the facts relating to the actual performance of work, not on the description of the relationship provided by the parties to the contract.

These principles are fully in line with how Swedish labour law has historically and still defines the employment relationship.²²

The Directive's provision on personal scope is relevant both for the Article on protection of workers participating in collective bargaining and for the Article on calculating the threshold that triggers obligations regarding the promotion of collective bargaining. However, the Swedish inquiry on the implementation of the Directive analyses the Directive's personal scope only in relation to the protection rule. It is nevertheless clear that

²⁰ SOU 2023:36, 74.

²¹ See Selberg N., Sjödin E., *Inrangering av gula fackföreningar i svensk kollektiv arbetsrätt*, in *SJT*, 2023, s. 335-365.

²² See, e.g., Ds 2002:56 Hållfast arbetsrätt för ett föränderligt arbetsliv, Ch. 2.

the definition of which persons performing work should be included in the calculation of collective bargaining coverage has a direct bearing on the effective implementation of the Directive in Sweden.

7. The Directive's fundamental concepts of collective agreement and collective bargaining in a Swedish context.

The concept of a collective agreement is defined in Article 3(4) of the Minimum Wage Directive as a written agreement containing provisions on working conditions and terms of employment concluded by the social partners who are authorised to negotiate on behalf of workers and employers in accordance with national law and practice, including collective agreements that have been declared universally applicable. In Swedish law – Section 23 of the Co-Determination Act (1976:580) – a collective agreement is defined based on three criteria: 1.) it must be in writing, 2.) the parties must be an employers' organisation or an employer, and a trade union, and 3.) its content must concern terms of employment or otherwise the relationship between employer and employee.

As regards collective bargaining agreements regulating terms and conditions for employees, it can be assumed that the Directive's definition of a collective agreement corresponds to the Swedish concept.²³ However, in Sweden collective bargaining agreements can also solely contain regulation of the relationship between the employer (and/or his or her organisation) and the trade union. This kind of agreement or provision seems to fall outside of the Directive concept of collective bargaining agreement. Recital 12 on collective agreements emphasises that the different national traditions in the Member States should be respected.

In the Minimum Wage Directive, collective bargaining is defined in Article 3(3) as any negotiations taking place in accordance with national law and practice in the relevant Member State between an employer, a group of employers or one or more employers' organisations, on the one hand, and one or more workers' organisations, on the other hand, for the purpose of determining working conditions and terms of employment.

It can be assumed that the Directive's definition of collective bargaining corresponds to the Swedish concept.²⁴

8. Legal consequences of less than 80 % collective agreement coverage.

8.1. Introduction.

Specific legal consequences are prescribed if collective agreement coverage in Sweden falls below 80 per cent. The threshold of 80 per cent collective agreement coverage is, according

²³ SOU 2023:36, 62 for the same assessment.

²⁴ SOU 2023:36, 62 for the same assessment. Also cf. Section 2.1 förordningen (2007:912) med instruktion för Medlingsinstitutet.

to recital 25, chosen because Member States with a small proportion of low-paid workers have a collective agreement coverage rate above 80 per cent, and because the majority of Member States with high minimum wages relative to the average wage have coverage above 80 per cent.

The Directive (recital 14, in fine) reminds us that in Member States where minimum wage protection derives solely from collective agreements, the proportion of workers not covered varies from about 2 per cent to 55 per cent of all workers.

In the event of collective agreement coverage falling below 80 per cent, Member States should, according to recital 25, take measures to improve such collective bargaining. Sweden should then provide a framework with enabling conditions for collective bargaining and establish an action plan to promote collective bargaining with the aim of gradually increasing collective agreement coverage.

In order to respect the autonomy of the social partners, including their right to collective bargaining and excluding any obligation to conclude collective agreements, the threshold of 80 per cent coverage should, according to recital 25, only be interpreted as an indicator triggering the obligation to establish an action plan.

8.2. Collective agreement coverage?

The Directive defines collective agreement coverage in Article 3(5) as the proportion of workers at national level who are covered by a collective agreement, calculated as the ratio between the number of workers covered by collective agreements and the number of workers whose working conditions can be regulated by collective agreements in accordance with national law and practice.

In Sweden, collective agreement coverage is measured as the ratio between the number of employees covered by collective agreements and the total number of employees included in the relevant statistics at the time of measurement. This is assumed to correspond to the Directive's requirements.²⁵ In Sweden there are no restrictions on which employees can be covered by collective agreements. The concept of a collective agreement is defined in Swedish law, and it is assumed that all collective agreements at national level should be included in the calculations required by the Directive. The Directive's definition of a collective agreement in Article 3(4) is assumed to correspond to the existing Swedish concept.²⁶

The Swedish National Mediation Office is responsible for "collecting, compiling and interpreting statistics relevant to wage formation."²⁷ This mandate includes annually producing up to-date and reliable data on collective agreement coverage in Sweden.

²⁵ SOU 2023:36, 78.

²⁶ SOU 2023:36, 62 for the same assessment. Also see text above and Section 23 of the Swedish Co-Determination Act (1976:580).

²⁷ Section 2.4 förordningen (2007:912) med instruktion för Medlingsinstitutet.

8.3. Obligations when collective agreement coverage falls below the threshold: the Directive's requirements.

If collective agreement coverage were to fall below the threshold, Sweden shall, according to Article 4(2), provide a framework with enabling conditions for collective bargaining, either through legislation after consultation with the social partners, or through an agreement with them. In addition, an action plan shall be established to promote collective bargaining. The plan shall be drawn up after consultation with the social partners or through an agreement with them, or at the joint request of the social partners as agreed between them.

The action plan shall include a clear timetable and concrete measures aimed at gradually increasing collective agreement coverage, with full respect for the autonomy of the labour market parties. The action plan shall be regularly reviewed and revised as necessary. Revision shall take place after consultation with the social partners or through an agreement with them, or at the joint request of the parties as agreed between them. In any case, the action plan shall be reviewed at least every five years. The action plan and any updates shall be made public and notified to the Commission.

The Commission shall, according to Article 10(3), analyse the data and information provided by Member States in the action plans under Article 4(2), report to the European Parliament and the Council in this regard every two years, and at the same time publish the data and information provided by Member States.

In accordance with national law and practice, Sweden shall, under Article 17(3), take appropriate measures to ensure that the social partners participate effectively in the implementation of the Directive. It is permitted to delegate implementation wholly or partly to the social partners, including the preparation of an action plan under Article 4(2), if they jointly request it. In that instance, all necessary measures shall be taken to ensure that the obligations laid down in the Directive are always complied with. National tradition and practice, as well as historical context, shall be considered when analysing progress in increasing collective agreement coverage, particularly regarding the action plan (recital 25, in fine).

8.4. Obligations when collective agreement coverage falls below the threshold: measures in Sweden.

The obligation, under certain conditions, to establish a framework with enabling conditions for collective bargaining, either through legislation after consultation with the social partners or through an agreement with them, is not implemented through any changes to the existing legal system. Instead, the established and well-developed system for negotiations and the conclusion of collective agreements constitutes the implementation measure regarding the framework of enabling conditions for collective bargaining.²⁸

²⁸ SOU 2022:36, 81.

Nor has the obligation, under certain conditions, to launch an action plan to promote collective bargaining given rise to any changes in the existing legal system. It follows directly from the Directive that the establishment (and review) of an action plan is the responsibility of the State, ultimately the Government. Thus, no proposal has been put forward regarding who should be responsible for preparing an action plan or what role the social partners and the authorities should have in this context.²⁹ The government inquiry on the implementation of the Minimum Wage Directive argues that recital 25 should be understood as meaning that Member States have considerable discretion in determining the form of the action plan, and that the measures proposed must depend on the actual cause or explanation for the decline in collective agreement coverage – and these, it is stated, should not be speculated upon in advance.

At present (statistics for 2024), the collective agreement coverage rate in Sweden is 88 per cent, and it has likely been at this level for a long time, at least since 2005.³⁰ In the public sector, coverage is always 100 per cent – variations therefore always concern the private sector. More blue-collar workers (approx. 89 per cent) than white-collar workers (approx. 75 per cent) are covered by collective agreements. Coverage increases with company size: 1–9 employees: 44 per cent, 10–19 employees: 70 per cent, at least 500 employees: 98 per cent.³¹ In Sweden, the terms and conditions applicable to individual employees are regulated by collective bargaining agreements when the employer either becomes a member of an employers' organisation that is bound by a collective bargaining agreement or concludes a collective bargaining agreement directly with a trade union (i.e. a so-called accession agreement; "*hängavtal*").³² Collective agreement coverage is therefore a function of the employers' actions, not of workers organising.

Against this background, it seems likely that a framework and action plan under the Minimum Wage Directive in Sweden would include measures targeting employers in the private sector. If large companies change their attitude towards trade unions and collective agreements as a regulatory instrument, collective agreement coverage could quickly decrease. Measures would then likely be directed at large employers in the private sector. At present, from the perspective of the framework and action plan, there is potential in getting micro and small enterprises to conclude collective agreements. There are no precedents in Sweden for state-organised campaigns to increase employer organising or otherwise to increase collective agreement coverage. Measures to encourage employer organising must, as a matter of course, be implemented with respect for employers' negative freedom of association – a not unknown issue in Sweden.³³

²⁹ SOU 2023:36, 83-85.

³⁰ Medlingsinstitutet, Kollektivavtalstäckning och arbetsmarknadens organisationer 2024.

³¹ Medlingsinstitutet, Kollektivavtalstäckning och arbetsmarknadens organisationer 2024.

³² Medlingsinstitutet, Kollektivavtalstäckning och arbetsmarknadens organisationer 2024.

³³ See the judgment of the European Court of Human Rights (Grand Chamber), *Gustafsson v. Sweden*, (application no. 15573/89) of 25 April 1996.

8.5. Conclusion.

Sweden and the EU calculate collective agreement coverage in the same way. At present, Sweden is well above the stipulated threshold that triggers obligations regarding a framework and an action plan for collective agreement coverage. Currently no preparation is underway for either a framework or an action plan – the Swedish government suggests that these measures must reflect the reason for the decline in collective bargaining coverage and that these measures cannot be defined in advance. Employers' organisation rates currently sustain the coverage rate. Measures to increase it must thus target employers, and this may raise questions about employers' negative freedom of association.

A framework and an action plan must ensure competitive neutrality between the option of concluding an accession agreement ("*hångavtal*") and becoming a member of an employers' organisation. If an accession agreement ("*hångavtal*") is significantly more costly for employers than being bound by a collective agreement through becoming a member of an employers' organisation, an infringement of their negative freedom of association could possibly arise. The Swedish State has no experience of promoting collective agreement coverage – beyond enacting the rules of the existing collective labour law.

9. Data collection and reporting to the European Commission.

The only new provisions in Swedish law because of the Minimum Wage Directive concern Article 10. This Article stipulates that Member States shall take appropriate measures to ensure that there are effective tools for data collection to monitor minimum wage protection. In addition, Member States shall, every two years, before 1 October of the reporting year, provide the Commission with data and information on the level and development of collective agreement coverage, as well as the lowest wage levels set in collective agreements covering low-paid workers, or an estimate of these levels if reliable data are not available from the competent national authorities, and the proportion of workers covered by them, or, if reliable data are not available from the competent national authorities, an estimate of this proportion.

This information shall also include the level of wages paid to workers not covered by collective agreements and its relation to the level of wages paid to workers covered by collective agreements. It is permitted (recital 33) for Member States to rely on data collection carried out within the framework of Eurostat and the OECD.

The Swedish transposition of the Minimum Wage Directive proceeds on the assumption that the data collection already undertaken in Sweden before the Directive was required to be transposed is sufficient to meet the requirements following from Article 10(1) of the Directive.³⁴ The Swedish National Mediation Office (Medlingsinstitutet) is responsible for data collection. The implementation of the Minimum Wage Directive clarifies that Swedish

³⁴ SOU 2023:36, 90 ff.

National Mediation Office shall provide information under Article 10(2) to the European Commission.³⁵

10. Social and labour law obligations in connection with public procurement.

Sweden has implemented the public procurement directives referred to in Article 9 of the Minimum Wage Directive. The Swedish implementation of Article 9 of the Minimum Wage Directive is based on assumptions found in recitals 31–32, which state that the Directive does not create any new rights or obligations.

Therefore, no measures are taken pursuant to Article 9 of the Minimum Wage Directive.

11. Right to redress, protection against adverse treatment and sanctions.

The Minimum Wage Directive stipulates (in Article 12(1)) that Member States shall ensure access to effective and impartial dispute resolution in a timely manner and the right to review in cases of infringement of rights concerning statutory minimum wages or minimum wage protection, where such rights are laid down in national law or in collective agreements. In addition, Member States shall (under Article 12(2)) take the necessary measures to protect workers and workers' representatives, including those who are members of workers' organisations or trade union representatives, against adverse treatment by the employer and against adverse consequences due to complaints submitted to the employer or because of proceedings initiated to ensure compliance in cases of infringement of rights concerning minimum wage protection, where such rights are laid down in national law or in collective agreements.

According to the Minimum Wage Directive (Article 12(2)), Member States shall have rules on sanctions applicable in cases of infringement of rights and obligations covered by the Directive, where these rights and obligations are laid down in national law or in collective agreements. In Member States without statutory minimum wages, such as Sweden, these rules may include, or be limited to, a reference to compensation and/or contractual sanctions provided for, where applicable, in rules on the application of collective agreements. Sanctions shall be effective, proportionate and dissuasive.

Recital 35 of the Directive emphasises that the involvement of the social partners may be useful in further developing impartial dispute resolution mechanisms in Member States and that workers should be informed about review mechanisms to be able to exercise their right to review.

The Swedish implementation of Articles 12 and 13 assumes in the *travaux préparatoires* that these articles do not create any new individual rights or obligations. Here too, the Swedish model for labour market regulation is said to implement the Minimum Wage Directive. The

³⁵ Section 5 a förordningen (2007:912) med instruktion för Medlingsinstitutet in its wording after amendment SFS 2024:919.

government inquiry goes so far as to state that the Directive's "objective" in this respect "is fulfilled in Sweden through the Swedish model for wage formation and the outcome that the model results in."³⁶ Even if the Directive could be interpreted as including in Articles 12 and 13 an individual right to have freedom of association respected by the other party to the agreement, no national implementation measures are considered necessary.³⁷

What implements the Directive are Swedish labour law rules on:

- Economic damages and punitive damages for infringement of freedom of association and for breach of collective agreements.³⁸
- The judicial system, and particularly the dispute resolution provided by the Labour Court.³⁹
- The prohibition of reprisals contained in the general employment protection rule requiring objective grounds for dismissal⁴⁰, in freedom of association, and in unwritten principles prescribing that managerial prerogatives (including decisions on reassignment) must be exercised within the framework of good practice in the labour market.⁴¹
- The general criminal law protection against harassment.
- Occupational health and safety law requirements aimed at creating an acceptable psychosocial work environment.

Thus, a mix of different types of laws and unwritten legal principles implement Articles 12 and 13 of the Minimum Wage Directive.

12. Information to workers and employers.

The Minimum Wage Directive requires (in Article 14, recitals 33–34), insofar as relevant for Sweden, that Member States ensure that employees and employers, including small and medium-sized enterprises, are informed about all national measures transposing the Directive, together with the relevant provisions already applicable in the area referred to in Article 1 on the framework for promoting collective bargaining on wage setting and improving workers' effective access to the right to minimum wage protection in collective agreements.

Sweden has not taken any measures in national law pursuant to Article 14 of the Minimum Wage Directive. Here too, the Swedish model for wage setting in collective agreements (see above) and the activities of the Swedish National Mediation Office are considered to implement the Directive's requirements.

³⁶ SOU 2023:36, 108. Author's translation from Swedish.

³⁷ SOU 2023:36, 109.

³⁸ Sections 54–62 of the Swedish Co-Determination Act (1976:580).

³⁹ The Labour Disputes (Judicial Procedure) Act (1974:371).

⁴⁰ Sections 7 and 18 of the Employment Protection Act (1982:80).

⁴¹ SOU 2023:36, 112 with further references.

13. Summary and conclusion.

Sweden has not made any changes to its substantive labour law (i.e. the rights and obligations on part of employers and employees, and their organisations, respectively) because of the Minimum Wage Directive. The only legislative amendment implemented concerns the designation of a government agency responsible for reporting to the European Commission.

In Sweden, it is assumed in the *travaux préparatoires* that the Minimum Wage Directive does not give rise to any individually enforceable rights or obligations, and therefore no implementation measures are considered necessary. It is the Swedish model that is regarded as implementing the Minimum Wage Directive (see above sections 2 and 11). The description of the Swedish model for labour market regulation in a government inquiry almost acquires the status of an implementation measure⁴², even though it is in fact the individual laws, principles and institutions that constitute the Swedish model and together form a system of minimum wage protection that satisfies the Directive.⁴³ The *travaux préparatoires* phrase the issue in the following terms:

In summary, it is the Swedish model of wage formation that is decisive for the manner in which Sweden fulfils the Directive's overarching objective. That model, which is fundamentally based on collective bargaining, has demonstrably functioned very well. It may therefore be said that the Directive's overarching objective is realised through the Swedish wage-setting model and the outcomes that it generates.⁴⁴

The rationale underlying this language is likely to keep the European Union at the greatest possible distance from the very heart of the Swedish model of labour-market regulation – namely, wage formation. Yet the provision may have the opposite effect. Rather than shielding the Swedish model from EU law, it might invite EU law into parts of the model that have hitherto remained largely insulated from supranational scrutiny. The text suggests that the traditional mechanisms of wage formation – most notably collective bargaining, industrial action, and collective agreements – are to be regarded as elements of the national implementation of Directive (EU) 2022/2041 on adequate minimum wages. Such an approach would raise a range of new questions, not least concerning the applicability⁴⁵ of the Charter of Fundamental Rights of the European Union to the processes that together make up the Swedish wage-formation model. The consequences would be far-reaching and difficult to predict. One possible implication is that the issue of whether industrial action should be subject to a proportionality requirement – an idea consistently rejected in the

⁴² See Case C-478/99, *Commission of the European Communities v Kingdom of Sweden*, Judgment of the Court (Fifth Chamber), 7 May 2002, ECLI:EU:C:2002:281, in which the Court under certain conditions accepts preparatory works statements as a national implementation measure regarding a directive.

⁴³ For this section: Selberg N., Sjödin E., *Europeiseringen av arbetsrätten intensifieras*, in *Lag & Avtal*, 29 April 2026, <https://www.lag-avtal.se/nyheter/selberg-sjoedin-europeiseringen-av-arbetsraetten-intensifieras/4459962>.

⁴⁴ SOU 2023:26, 56. Author's own translation.

⁴⁵ See Case C-617/10, *Åklagaren v Hans Åkerberg Fransson*, Judgment of the Court (Grand Chamber) of 26 February 2013, ECLI:EU:C:2013:105.

inherited sources⁴⁶ of Swedish labour law – could be revived by resourceful employers prepared to rely on EU-law arguments before the national courts.

The government has explained that it is of the opinion that no implementation measures are needed because of the Directive regarding freedom of association.

Some scholars argue that it cannot be ruled out whether Sweden, through the general Contracts Act of 1915 (which prescribes in Section 36 that a contractual condition may be modified if deemed to be unreasonable), could be said to have, in the relevant sense, an individually enforceable right to a reasonable wage.⁴⁷ In conclusion, it perhaps remains an open question whether a Swedish court's application of these rules (i.e. Section 36 of the Contracts Act of 1915) in a dispute between private parties would be influenced by the remaining provisions of the Minimum Wage Directive on statutory minimum wages combined with Articles 31 and 47 of the EU Charter.⁴⁸

Currently, a discussion is taking place in political terms as to whether the judgment⁴⁹ of the Court of Justice of the European Union on the Minimum Wage Directive should be regarded as a consolidation of the Swedish model for labour market regulation. The legal debate so far suggests that the judgment will not have any significant impact on the Swedish model for labour market regulation.

It can be debated whether the judgment consolidates a harmonisation of the concept of collective agreement in a way that may give rise to new questions in Sweden in the future. The legal instrument that lies at the core of, and arguably constitutes the defining feature of, the Swedish model – now form part of the conceptual framework of EU law, provided that they contain terms and conditions governing the employment relationship of individual workers. Agreements concerned solely with the relations between employers and trade unions, or otherwise regulating their mutual relations, that are very commonplace in Sweden, appear to fall outside that harmonised concept. Accordingly, the compatibility of particular Swedish collective agreements with EU-law requirements may in the future become the subject of judicial scrutiny. In that respect, the judgment may open the door to a more intensive and potentially unpredictable process of Europeanisation within Swedish labour law.

The Swedish debate on the Minimum Wage Directive has at times been marked by the conflation of questions of policy and questions of law. In particular, the political attractiveness of efforts to influence (i.e. raise, most often) minimum wage levels across the European Union has been conflated with the distinctively separate constitutional issue of whether the Union possesses competence to legislate in this area.⁵⁰ Such quasi-legal reasoning has tended to obscure the otherwise reasonable position that, while higher minimum wages

⁴⁶ AD 1998 nr 17, SOU 1998:141, prop. 1999/2000:32.

⁴⁷ Selberg N., Sjödin E, *Direktivet gäller idag i Sverige*, in *Lag & Arbet*, 9 February 2025.

⁴⁸ Selberg N., Sjödin E, *Sverige kan sätta käppar i hjulen för Ursula von der Leyens kronjuvel*, in *Lag & Arbet*, 20 January 2025, available at <https://www.lag-avtal.se/arbetsmarknad/selberg-sjoedin-sverige-kan-saetta-kaeppar-i-hjulen-foer-ursula-von-der-leyens-kronjuvel/4324110>. Cf. p. 94 of the opinion of the Advocate General Emiliou; Opinion of Advocate General Emiliou in Case C-19/23, 14 January 2025, ECLI:EU:C:2025:11.

⁴⁹ C-19/23, nt. (5).

⁵⁰ Iossa A., *All Quiet on the Northern Front – the EU Directive on Adequate Minimum Wages as Seen from Sweden*, in *Dispatches*, 1, 2025, <https://digitalcommons.osgoode.yorku.ca/dispatches/1>.

may be normatively desirable, the Treaties in their current form do not empower the European Union to regulate wages. It is to be hoped that the Court of Justice's ruling will facilitate a clearer distinction in future debates concerning measures affecting wage determination in Europe.

The judgment concerning the Minimum Wage Directive has received relatively limited attention in Sweden. One scholar has noted that all the principal actors – the Commission, the Swedish and Danish governments, and the organisations representing employers and workers – have declared themselves victorious. He nevertheless compares the judgment to an appendectomy: although a person can survive without an appendix, the procedure may still be of vital importance.⁵¹ Claims that the judgment has reinforced the Nordic collective bargaining model typically rely on paragraph 107 of the Court's reasoning, as endorsing the view that restrictions on the Union's competence to legislate in matters of pay serve to protect the autonomy of the social partners within national systems of industrial relations.

By all accounts, the Minimum Wage Directive itself will not pose any major challenges for Sweden – collective agreement coverage and wage levels currently appear to be stably high, but this may of course change in the future, and then the Directive's rules on promoting collective bargaining will become relevant and operational. If these rules were to be applied, the State would likely have to assume a role in the labour market that has so far been unusual in modern Swedish history.

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⁵¹ Sinander E., *Minimilönedomen är som en blindtarmsoperation*, in *Lag & Avtal*, 13 November 2025, available at the following link: <https://www.lag-avtal.se/domsreferat/erik-sinander-minimilonedomen-ar-som-en-blindtarmsoperation/4411267>.