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Waiting for adequate minimum wages

The Court has done its part

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Key points

- On 11 November 2025, the Grand Chamber of the Court of Justice of the European Union largely upheld the Directive on Adequate Minimum Wages. This represented a substantial rejection of both the Danish request for annulment of the Directive and the very broad reading of the competence exclusion advanced by Advocate General Emiliou.
- The Court's conclusions are underpinned by a reworking of the direct interference test inherited from its previous case law on the competence exclusion in the field of pay, adapted to the specific circumstances of the annulment action at issue, which concerns a measure that has a direct connection with the issue of pay.
- In examining the Directive, the Court finds that most provisions do not directly interfere with Member States' determination of pay. The only exceptions are Article 5(2), which requires four mandatory criteria for setting and updating statutory minimum wages, and Article 5(3), which prohibits automatic indexation where it would reduce those wages; these provisions were annulled, while the rest of the Directive was upheld.
- The Court's judgment allows for a more optimistic outlook on the future of European social policy, dispelling the clouds that had gathered as a result of the pending action for annulment of the Directive.

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– However, it also highlights even more clearly that the achievement of its core objectives is largely dependent on the willingness and ambition of Member States in transposition and implementation.

Introduction

Directive (EU) 2022/2041 on Adequate Minimum Wages ('the Directive') is arguably the most ambitious piece of social legislation introduced by the European Union (EU) in recent years. It has strong symbolic value, as it marked a turning point in the approach to the issues of wages and collective bargaining. By embracing upward wage convergence across the EU Member States as a path towards inclusive and sustainable growth, it signals that the EU has moved away from the excesses of neoliberalism that characterised the response to the Great Recession of 2007–2009 and the subsequent public debt crises, with their strong pressures towards wage moderation.

At the same time, the Directive is also one of the most controversial recent instruments of social legislation. Politically enabled by the European Pillar of Social Rights, which recognises the right to 'adequate minimum wages' (Principle 6), it has been anchored within the EU's system of competences on the legal basis of Article 153(1)(b) of the Treaty on the Functioning of the European Union (TFEU), concerning working conditions. Despite this anchoring, it was clear that the EU legislator was acting at the very limit of the competence exclusion laid down in Article 153(5) TFEU with regard to the topic of 'pay'.

Indeed, a potential violation of the principle of conferral was promptly raised by a Member State that had been among the main opponents of the Directive from the outset, namely Denmark. On 18 January 2023, Denmark filed an action for annulment, later supported by Sweden. The main claim was based on the argument that the Directive directly interferes with the determination of pay in the Member States, which also affects the right of association, another area excluded from EU competence under Article 153(5) TFEU. It thus infringes the principle of conferral of powers. The action was decided by the Grand Chamber of the Court of Justice of the EU on 11 November 2025, after the Advocate General's Opinion of 14 January 2025 supported the principal action for annulment, taking the view that the Directive was not compatible with the 'pay' exclusion.

The aim of this Policy Brief is to analyse the Court's decision on the main claim concerning the lack of competence with respect to pay and freedom of association. The analysis follows the logical structure of the Court's reasoning. First, it examines the analytical tool employed by the Court, namely an updated version of the direct interference test. It then turns to the application of that test to the provisions relating to support for collective bargaining and to the procedural requirements governing the setting of statutory minimum wages. The Brief concludes with some reflections on the significance and implications of the decision for the future of the European approach to the issues of wages and collective bargaining.

The direct interference test

The Court's reasoning on the compatibility of the Directive with the exclusion relating to 'pay' laid down in Article 153(5) TFEU begins with a reference to its previous case law (paras. 67–68). On the basis of that case law, the Court reiterates, as a preliminary point, that, in order not to unduly affect the social policy objectives that fall within the EU's competence, the competence exclusion must be interpreted restrictively and therefore cannot be extended to questions involving any sort of link with pay.

To determine which questions relating to pay are excluded from the EU's competence, the test of direct interference, developed in that same case law, comes into play (Countouris 2025). The Court recalls that direct interference is clearly present in measures such as the equivalence (uniformisation) of all or some constituent parts of pay and/or pay levels, or the setting of a minimum guaranteed EU wage (para. 68). Accordingly, the EU may not harmonise the overall level of wages in the Member States, nor may it intervene in individual components of remuneration. Nor may the EU, as emerges implicitly from the subsequent analysis of Article 4 Directive on Adequate Minimum Wages (paras 76–85), interfere with the method of minimum wage determination (statutory law or collective bargaining) by imposing one of them on the Member States.

Having recalled the test of direct interference, the Court then proceeds to supplement it (paras 69–75). This is necessary because, unlike the acts in relation to which the test was originally developed – acts that touched upon aspects of remuneration in the context of instruments dealing mainly with equal treatment in employment and working conditions – the contested Directive has as its very subject matter 'minimum wage adequacy' and therefore 'pay'. In this regard, the Court clarifies that a close connection between the act under review and the matter of remuneration does not automatically exclude EU competence (para. 70).

This is the first significant passage of the judgment, as it implicitly – but clearly – disavows one of the main arguments put forward by the Advocate General in support of annulment: a directive whose subject matter and ultimate objective is 'wage adequacy' necessarily aims to regulate 'pay', thereby conflicting with Article 153(5) TFEU (AG Opinion, paras 74–75).

The Court instead neutralises these aspects (title and subject matter) for the purposes of the direct interference test. Moreover, it excludes any automatic intrusion into the competence gap where a measure is capable, in practice, of producing positive effects or repercussions on the level of pay; provided, of course, that 'such measures fully respect the diversity of national practices of the Member States and the autonomy of the social partners' (para. 71).

In light of these two additions to the test of direct interference, the Court openly acknowledges a consistent overlap between the EU's harmonisation competence in the field of 'working conditions' and the competence exclusion set out in paragraph 5. This overlap partially fills the competence gap because pay inevitably forms an integral part of working conditions (para. 72). Arguably their most significant component.

But this is not all. In a further key passage of the judgment, the Court clarifies that the Directive's provision of procedural rules for the setting and updating of minimum wages likewise does not fall within the competence exclusion. The implicit purpose of this clarification is to rebut another of the AG's central arguments, which had expanded the test of direct interference so far as to encompass any attempt to regulate pay, including through regulation of the modalities or procedures for fixing pay levels.

At this point, the Court offers what effectively amounts to an authoritative interpretation of its own case law. It does so by excluding the existence of direct interference by EU law in the determination of pay in relation to: Article 5(1), which requires Member States to establish the necessary procedures for the setting and updating of statutory minimum wages based on clear and stable criteria (para. 91); Article 5(5), concerning the regular and timely updating of statutory minimum wages; and Article 5(6), relating to the designation or establishment of one or more consultative bodies. These provisions lay down procedural rules for the setting and updating of statutory minimum wages, without, in the Court's opinion, prescribing mandatory substantive elements relating to the level or constituent components of statutory minimum wages (paras 91, 92, 100).

To sum up, a directive whose main object is minimum wages and which may even affect their levels does not automatically fall within the competence exclusion laid down in Article 153(5) TFEU. It risks doing so only where it contains measures that directly affect the autonomy of Member States and national social partners in determining pay levels and their constituent elements, or in choosing a method for setting minimum wages. This is not the case where the measures are limited to procedural requirements governing the setting of minimum wages at national level.

Adequate Minimum Wages Directive tested against the updated direct interference test

The Court proceeded to apply the updated direct interference test to the provisions of the Directive, following the order of the articles. It first examined Article 4, which is aimed at supporting collective wage bargaining, and then Article 5, which is dedicated to the procedures for setting and updating statutory minimum wages. Article 6, which lays down restrictions on variations and deductions that may reduce the minimum wage for certain categories of workers, was also considered, having been brought into the proceedings by the applicants' arguments. Its compatibility with the competence exclusion was swiftly dismissed as, in the Court's view, it is clearly unrelated to any form of direct interference with pay (para. 103). Indeed, the provision had not even been examined in the Advocate General's Opinion.

In the following paragraphs, the analysis will therefore focus exclusively on Articles 4 and 5.

Provisions that withstood the test…

As regards the alleged encroachment by Article 4 upon the 'pay' exclusion, the Court had little difficulty in rejecting the highly strained interpretation of that provision put forward by Denmark and shared by the Advocate General.

According to that reading, by imposing positive obligations on Member States with a view to promoting collective bargaining, the Directive would necessarily restrict their freedom to choose the method of wage determination on which they may rely (AG Opinion, para. 91).

The Court dismissed that interpretation, observing that although Article 4 introduces ‘a certain form of State intervention in the arrangements for collective bargaining on wage-setting’ (para. 77), it does not in any way interfere with Member States’ choice of the method for setting minimum wages, whether through statutory law and/or collective bargaining (para. 78). Moreover, Article 4 ‘neither governs the content nor prescribes the outcome of collective bargaining’ (para. 79). The requirement to establish an action plan containing measures to promote collective bargaining coverage in Member States where coverage falls below 80% does not interfere with the autonomy of Member States or of the social partners, as it does not impose any obligation of result. The 80% coverage rate does not constitute a binding target. As Recital 25 clarifies, it is ‘only to be construed as an indicator triggering the obligation to establish an action plan’. Its non-attainment ‘does not therefore in itself constitute a breach of an obligation on that Member State’, as the Court expressly confirmed (para. 80).

It follows that neither Member States nor the social partners are in any way forced to adopt measures, such as the introduction of an extension mechanism, which, while certainly capable of effectively resolving the coverage problem, would limit their autonomy. On the contrary, the Directive does not interfere with the choice of measures to be adopted in support of collective wage bargaining, under either paragraph 1 or paragraph 2 of Article 4, which are left almost entirely to the autonomy of the Member States and the social partners (paras. 81–83). Nothing in Article 4, the Court concluded, therefore suggests any direct interference by EU law in the determination of wages (para. 85).

Nor does that provision, or any other provision of the Directive on Adequate Minimum Wages, suggest a direct interference with the right of association. As with ‘pay’, the competence exclusion must be interpreted restrictively and therefore does not cover any measure that is merely linked to the right of association, but only measures that amount to direct interference by EU law with that right or with its exercise (para. 116). In order to identify such measures, the Court considered it necessary to disentangle the right of association from the right to collective bargaining. The two are clearly distinct rights, as is evidenced in particular by the fact that both the 1989 Community Charter of the Fundamental Social Rights of Workers and the Charter of Fundamental Rights of the EU devote separate provisions to them (para. 111).

The competence exclusion thus concerns, as the Advocate General has also acknowledged (AG Opinion, para. 101), only the right of association in a strict sense, understood as the right of workers and employers to form and to join (or not to join) an organisation for the collective defence of their interests, as well as the ability of such organisations to pursue their activities and operate without unjustified interference by the State (para. 112). Having clarified this, the Court had little difficulty in concluding that none of the provisions of the Directive, and in particular Article 4, interfere with the direct regulation of the right of association as so defined (paras. 117–118).

As for the rules governing the setting and updating of statutory minimum wages under Article 5, it had already been anticipated that the procedural requirements contained in Article 5(1), as well as Articles 5(5) and 5(6), do not entail any direct interference by EU law in the determination of pay within the EU. Nor, in the opinion of the Court, does Article 5(1) – by requiring Member States to introduce procedures for setting and updating statutory minimum wages on the basis of clear and stable criteria intended to contribute to their adequacy – introduce any mandatory reference to an EU autonomous benchmark of 'adequacy' with regard to statutory minimum wages. Had such a reference been present, it would necessarily have amounted to a direct interference by EU law on the level of national minimum wages.

This constitutes another key passage of the judgment, aimed once again at directly, albeit implicitly, refuting one of the AG's main arguments. In the AG's opinion, a binding right to an adequate minimum wage could be inferred from the link drawn in Recital 3 of the Directive between the Adequate Minimum Wages Directive and Article 31 of the Charter of Fundamental Rights of the European Union (CFREU), which provides that every worker has the right to 'fair and just working conditions'. That link would require Article 5 to be interpreted as imposing on Member States an obligation to ensure that statutory minimum wages are adequate in accordance with the notion of 'decent' working conditions referred to in Article 31(1) CFREU (AG Opinion, para. 82). Moreover, in the AG's view, that supposed right to an adequate minimum wage would then be given concrete expression through Article 12 of the Directive, which recognises a 'right to redress' in cases of infringements of rights relating to statutory minimum wages (AG Opinion, para. 94).

The Court's response is articulated through two counterarguments. The first is entirely straightforward, yet was evidently overlooked by the Advocate General: pursuant to Article 51(2) CFREU, the Charter cannot confer on the EU competences that are not already provided for in the Treaties (para. 93). Even more so, it cannot confer a competence – such as setting adequate minimum wages – that is expressly excluded by Article 153(5) TFEU. Any link between the criteria laid down in Article 5 of the Adequate Minimum Wages Directive and Article 31 of the Charter must therefore be ruled out, as must the possibility of importing into the Directive an autonomous EU concept of adequacy (Brameschuber 2024). Secondly, the existence of an individual right to an adequate minimum wage is not confirmed but rather contradicted by Article 12 of the Directive itself. Under that provision, the right to redress is conditional upon the existence of such rights under national law or collective agreements (para. 91). Accordingly, where a statutory minimum wage or an applicable collective agreement is absent in a Member State, workers may have no right to a minimum wage at all, and Article 12 cannot remedy that situation (Laulom 2024).

Nor does any reference to adequacy, or any other form of interference with the constituent parts or level of wages, arise from Article 5(4). Although that provision requires Member States to establish indicative reference values to guide their assessment of the adequacy of statutory minimum wages, suggesting (and not imposing) the use of indicators commonly employed at international level, Member States retain full discretion in determining the significance to be attributed to those values. Consequently, no mandatory reference is introduced either for the determination of statutory minimum wage levels or for the harmonisation of all or some of their constituent elements (para. 99).

... and those that did not withstand the test

However, not everything prescribed with regard to the procedures for setting statutory minimum wages remains within the EU's competence. According to the Court, Article 5(2) does not pass the direct interference test. That provision requires Member States to include, among the criteria they decide to incorporate into the procedures referred to in Article 5(1), at least the four criteria expressly listed for the setting and updating of statutory minimum wages, namely: the purchasing power of statutory minimum wages, taking into account the cost of living; the general level and distribution of gross wages; the growth rate of gross wages; and labour productivity trends. The Court agrees with the Danish applicant that, by imposing the consideration of those elements in the procedures for setting and updating statutory minimum wages, the EU legislature laid down a requirement affecting the composition of those wages and, consequently, their level (para. 95).

It could be objected that, upon closer examination of the relationship between paragraphs 1 and 2 of Article 5, several considerations might have supported a finding that paragraph 2 is compatible with the competence exclusion. The Court itself notes (para. 95) that those provisions show that the list of mandatory criteria is clearly not exhaustive. Member States may, in fact, add further criteria defined in accordance with national practices. They may also decide on the relative weight to be assigned to the various criteria, both those mandated by paragraph 2 and those freely added by the Member State. In addition to the Court's observations, it is highly plausible that the 'internal composition' of the criteria may likewise be determined by Member States, for example, the composition of the basket of goods used to calculate the cost of living, or the time period taken into account when assessing wage growth (Sagan and Schmidt 2024). Moreover, Member States could introduce additional criteria that typically promote wage moderation, such as the effects of minimum wages on employment and business competitiveness, and assign those criteria a higher relative weight than the mandatory ones, thereby neutralising their influence (Menegatti 2025).

If a Member State is thus able effectively to nullify the impact of those criteria, it becomes difficult to conclude that it is effectively compelled by the Directive to introduce wage-related elements capable of having a direct effect on statutory minimum wage levels. The impression is that such an effect would arise only if the Member State chose to allow it.

The Court's decision to partially annul paragraph 3, by contrast, appears to leave no room for counterarguments. That provision grants Member States the option of using automatic indexation mechanisms for the adjustment of statutory minimum wages, based on national criteria and practices, but subject to a caveat: 'provided that the application of that mechanism does not lead to a decrease of the statutory minimum wage'. It is true that this is merely a potential – and, in practice, very unlikely – scenario, namely that an automatic wage indexation mechanism might lead to a reduction in wages. Indeed, this has never occurred in any of the EU Member States in which such a mechanism is in place (Müller and Schulten 2025). However, there is no doubt that this non-regression clause is capable of potentially, however unlikely, directly affecting national choices regarding wage levels and therefore falls outside the EU's competence (paras 97–98).

The Court therefore concluded that the sentence just mentioned in Article 5(3) and the entirety of Article 5(2) (including the reference to it in Article 5(1)) must be annulled, as they are capable of causing a direct interference with the determination of remuneration at the national level. Although the Court did not state this explicitly, the partial annulment of those provisions is made possible by the severability test. According to the Court's case law, the partial annulment of an EU act is permissible only where the elements whose annulment is sought can be severed from the remainder of the measure and where their removal does not affect the substance or the spirit of the act (Ratti 2025). This is evidently the case with regard to the Court's surgical cuts to the Adequate Minimum Wages Directive.

Conclusions

With the Court's judgment, a (largely) happy ending seems to have been reached in the hitherto troubled existence of the Adequate Minimum Wages Directive. By 'saving' the Directive, the Court has also dispelled the clouds that had been gathering over the future of European social policy (Countouris 2025). From this perspective, there is reason to suspect that the Court's decision is not entirely free from political considerations. Faced with an action that was, as even the Advocate General acknowledged, primarily a matter of principle (AG Opinion para. 35), the impression is that the Court sought to give something to the Danish and Swedish applicants, while at the same time endeavouring not to inflict excessive damage on the Directive and its objectives. As already noted, Article 5(2) might perhaps have been preserved. Yet, as also observed, that same provision was not essential to the objective of minimum wage adequacy, because Member States remain free to calibrate the degree of commitment to those criteria, even to the point of effectively neutralising them. No big deal, therefore.

The Court has therefore carried out a rescue operation that was certainly welcome, but one that has inevitably laid bare the Directive's inescapable limitations. The Directive appears to have achieved important political objectives: drawing attention to issues of in-work poverty and wage policy; countering the populist narrative that portrays the EU as aligned with business elites; and demonstrating instead that the EU is attentive to the living and working conditions of its citizens. Nonetheless, its effectiveness appears far more limited when assessed against its main declared harmonisation objective, namely 'the adequacy of minimum wages for workers in order to contribute to upward social convergence' (Article 1(1)).

It suffices, in this respect, to consider the transposition process so far (Müller 2025). It is certainly true that some Member States have undertaken a 'strong' transposition. However, a significant group have shown little genuine interest in the Directive's objectives, either considering themselves already compliant or introducing only marginal adjustments. Another sizeable group of Member States has not yet transposed the Directive at all, some of them using the Advocate General's Opinion as an opportunity to delay transposition.

In short, some results have been achieved so far in terms of minimum wage adequacy, albeit more political than substantive. After all, it would not have been realistic to expect much more from a directive that, in order to achieve its objective, must rely largely on the goodwill of the Member States. This is a conclusion that the Court itself had to endorse when, in order to preserve the Directive, it was compelled to state explicitly what the EU legislature cannot do and has not done, namely to impose the adequacy of minimum wages, whether statutory or, a fortiori, collectively agreed. The message is clear: however narrowly it may be interpreted, Article 153(5) TFEU clearly cannot be ignored.

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