



## EU Directive on Adequate Minimum Wages: Denmark's Action for Annulment and the Review of the Judgment of the CJEU

Author: Salvatore Gabriele\*

### Introduction

In a landmark case<sup>1</sup> before the Court of Justice of the European Union (CJEU), Denmark, supported by Sweden, challenged the validity of the European Union Directive on adequate minimum wages (Directive 2022/2041<sup>2</sup>) in its entirety<sup>3</sup> with an action for annulment<sup>4</sup>. The Directive has its political roots in the European Pillar of Social Rights (EPSR), an interinstitutional declaration from 2017 in which EU institutions established 20 “principles and rights essential for fair and well-functioning

labour markets and welfare systems in 21st-century Europe” whose aim was to uphold EU social policy by achieving upward social convergence across the European continent.

The directive, which came into force in November 2022, sets a framework for the Member States of the EU to ensure the adequacy of statutory minimum wages and to promote collective bargaining on wage-setting.

### Denmark's claims

Denmark's central argument was that the directive interfered with national powers over wage determination and the right of association, areas excluded from EU competence by Article 153(5) TFEU. The Scandinavian country alleged that pay and association fall outside EU competence under the Treaty on the Functioning of the European Union (TFEU), and, consequently, that the Directive violates the conferral principle<sup>5</sup>. Denmark also challenged the legal basis of the directive, asserting that the EU had improperly relied on Article 153 (1) (b) TFEU.

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\* EU Law LLM graduated and Contractual Agent of the Legal Service of the European Commission. The views expressed are the author's views and cannot be attributed to the European Commission or its Legal Service.

<sup>1</sup> Judgment - 11/11/2025 - Denmark v Parliament and Council of the European Union (Salaires minimaux adéquats). Case C-19/23. ECLI identifier: ECLI:EU:C:2025:865

<sup>2</sup> Directive (EU) 2022/2041 of the European Parliament and of the Council of 19 October 2022 on adequate minimum wages in the European Union (ELI: <http://data.europa.eu/eli/dir/2022/2041/oj>).

<sup>3</sup> In the alternative, Denmark sought the annulment of Article 4(1)(d) and/or Article 4(2) of the Directive, which relate to the promotion of collective bargaining on wage-setting. According to Denmark they are incompatible with Art 153(5) TFEU and also encroach on the competences of the Member States.

<sup>4</sup> Action brought under article 163 of the Treaty on the Functioning of the European Union.

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<sup>5</sup> The principle of conferral is enshrined in article 5 of the Treaty on European Union and states that the Union may only act within powers granted by the Treaties.



## The Advocate General's Opinion

On 14 January 2025, the Advocate General Nikolas Emiliou issued a non-binding opinion recommending that the CJEU annuls the directive in full. The Advocate General argued that the directive's provisions, particularly those related to setting and updating minimum wages, violated the exclusion of "pay" from the EU framework of competences under Article 153(5) TFEU. He emphasized that any interference with the determination of pay, even indirectly, would breach the EU's remit. This Opinion was heavily criticized<sup>6</sup> since the Directive does not regulate "pay" and merely provides a procedural framework of rules for mechanisms that address a specific aspect of wage determination with the objective to have adequate minimum wages in all Member States<sup>7</sup>. These guidelines stated in the Directive, contrary to the AG's Opinion, can be considered an indirect way to determine the minimum levels of pay, not interfering

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<sup>6</sup> Paulet, E.; "Navigating Competence Boundaries—Advocate General Emiliou advises to annul in its Entirety the Minimum Wage Directive in Case C-19/23", EU Law Live, 30/01/2025, <https://eulawlive.com/op-ed-navigating-competence-boundaries-advocate-general-emiliou-advises-to-annul-in-its-entirety-the-minimum-wage-directive-in-case-c-19-23/>.

<sup>7</sup> Brameshuber, E.; "EU Competence in the Field of Social Policy: why the AG's Opinion on the Adequate Minimum Wage Directive in C-19/23 (does not matter(s))", EU Law Live, 31/01/2025, <https://eulawlive.com/op-ed-eu-competence-in-the-field-of-social-policy-why-the-ags-opinion-on-the-adequate-minimum-wage-directive-in-c-19-23-does-not-matters/>.

directly with the competence of the single Member States<sup>8</sup>.

## The Court's Judgment

The CJEU partially upheld Denmark's claims, annulling two provisions of the directive.

Article 5 of the Directive sets out procedural requirements for how EU Member States with statutory minimum wages must establish and update these wages. The ECJ found parts of this article to directly interfere with the powers of Member States and annulled Article 5(2), setting out four criteria that Member States must take into account when setting and updating the statutory minimum wage: the purchasing power of statutory minimum wages, the general level of wages and their distribution, the rate of wage growth, and the levels and development of national productivity in the long term.

As a consequence, also the part of the sentence '*including the elements referred to in paragraph 2*' in the fifth sentence of Article 5(1) and the part of the sentence '*provided that the application of that mechanism does not lead to a decrease of the statutory minimum wage*' in Article 5(3) were annulled. These provisions constitute the specific provisions of the Directive considered as directly interfering in the national determination of wages and the setting of a 'never decreasing' minimum

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<sup>8</sup> Kilpatrick, C., Steiert, M.; *A little learning is a dangerous thing: AG Emiliou on the Adequate Minimum Wages Directive (C-19/23, Opinion of 14 January 2025)*, EUI, LAW, Working Paper, 2025/02 - <https://hdl.handle.net/1814/77887>



wage. The Court ruled that these measures overstepped the EU's legal authority by regulating, also directly, aspects of national pay systems. As a result, this ruling adds some clarity to the Directive on adequate minimum wages, preserving its core while deepening the constitutional foundations of EU social policy. It's crucial to underline the deletion of the provisions that would directly interfere with national wage-setting, giving to the social policy of the Union some important boundaries.

Furthermore, the Court stressed that the directive did not interfere with the right of association or collective bargaining, as it only promoted such practices without imposing mandatory requirements on Member States.

### **Conclusion**

The judgment strikes a balance between supporting EU efforts to improve (minimum) working conditions and safeguarding Member State sovereignty over pay matters. While much of the directive remains intact, the annulment of provisions related to wage-setting criteria and automatic wage indexation signals the Court's willingness to protect national competences in areas excluded from EU powers.

The Court confirmed that Articles 4, 5 (except the annulled provisions) and 6 fall outside the exclusion of 'pay' from EU competence.

The two specific provisions of the Directive that constitute direct interference in the national determination of wages do not

jeopardise the general validation of European social policy and the directive's compliance with EU law, establishing a fundamental distinction that will influence future policy initiatives in this field. The Court held that the prohibition on regulation in Article 153(5) TFEU applies only to cases involving direct interference in the determination of remuneration. Other measures with a more indirect impact on wages, such as reviewing and updating statutory minimum wages and promoting collective bargaining, remain permissible as instruments for improving working conditions. The Court therefore confirmed the legal basis of the Directive in Article 153(1)(b) TFEU, according to which '*the Union shall support and complement the activities of the Member States in the fields of working conditions*'.