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EU Court Draws the Line on Regulating Minimum Wages — Balancing Member State and EU Competence

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Nearly three years after Denmark challenged the EU Directive on Adequate Minimum Wages (AMWD), last November 11th, 2025, the Court of Justice of the European Union (CJEU) has issued a landmark judgment clarifying the boundaries of EU legislative power in wage policy.

The ruling struck down selected provisions of the directive but preserved the EU's ability to shape wage setting procedures and

promote collective bargaining.

Contextualizing the AMWD

The AMWD is politically rooted in the European Pillar of Social Rights (EPSR), a 2017 interinstitutional declaration by which the three EU legislative institutions (Commission, Parliament, and Council) have set 20 "principles and rights essential for fair and well-functioning labor markets and welfare systems in 21st century Europe" (EPSR; Preamble No. 14). The goal was to achieve upward social convergence across the European continent.

Although lacking binding force, the EPSR has been a decisive agenda-setter in EU social policy since 2019. Drawing from Article 4 of the Revised European Social Charter, Principle No. 6 EPSR affirms that minimum wages must help workers secure a decent standard of living, meet the needs of workers and their families, and be set transparently and predictably.

Enhancing the adequacy and effectiveness of minimum wages and safeguarding collective autonomy (i.e., the autonomy of social partners) thus constitutes a twofold objective of EU's action in the social field, which the AMWD aims to embody with its Article 5 on adequacy criteria and Article 4 on support to collective bargaining on wage setting.

Procedural Power, Substantive Restraint: The Court's Competence Logic

The CJEU judgment originated from an action for annulment filed by Denmark in January 2023, with the support of Sweden, against the AMWD for alleged lack of competence (in EU parlance, "competence" simply means "authority" or "jurisdiction").

Pursuant to Article 4(2)(b), Treaty on the Functioning of the EU (TFEU), social policy is a field of shared competence between the EU and its Member States. Therefore, Member State actions are pre-

empted once the Union adopts legislation (Article 2(2) TFEU).

The heart of the case concerned Article 153(5) (TFEU), which excludes "pay" from the list of shared competences and reserves the matter to the Member States. The CJEU interprets this exclusion through a test of "direct interference". Despite the literal reading of the exclusion, the EU may regulate the procedural framework governing wage-setting, but it may not determine the wage levels themselves – levels that vary so substantially across the 27 Member States as to render harmonization impossible.

Two foundational premises underpin this approach: a) the pay exclusion cannot be read so broadly that it hollow outs EU social competences; b) pay cannot be isolated from "working conditions" (Article 153(1)(b) TFEU). If any measure affecting remuneration were outlawed, the EU could legislate very little in social policy. The CJEU therefore rejects its Advocate General's expansive reading of the exclusion and treats most of the AMWD as procedural, not substantive. It then concludes that the AMWD touches only indirectly on Member States' wage-setting powers.

Collective Bargaining Promotion

Against this competence backdrop, the CJEU upholds the AMWD' s two pillars.

Article 4 represents the directive's most politically significant provision, in that it requires Member States with less than 80% collective-bargaining coverage to adopt an action plan aimed to support social partners' dialogue.

According to the CJEU, this obligation respects collective autonomy – promoted by Article 152 TFEU – and preserves social partners' margin of discretion. Importantly, failing to reach 80% does not constitute a breach of EU law – the duty is one of means, not results.

The decision confirms that the EU can create frameworks encouraging collective bargaining, as long as it does not mandate outcomes.

What the EU Can – and Cannot – Legislate

Turning to Article 5, the CJEU draws a crucial distinction: while the AMWD sets out procedures for reviewing and updating statutory minimum wages, it does not establish a substantive EU-level right to an adequate wage.

Two points drive the analysis: "Adequacy" is not an autonomous EU legal concept, so Member States retain discretion over defining it. The directive's mechanisms are procedural, requiring transparency, evaluation, and periodic updates.

Only two provisions of the directive fail the competence test: Article 5(2), which required Member States to apply specific national criteria when assessing adequacy, and the final part of Article 5(3), which prevented Member States with automatic indexation systems from reducing minimum wages during negative inflation. According to the CJEU, these provisions directly constrain national discretion in setting wage levels.

Still, Member States are not left without guidance: their procedural obligations stem from two distinct sources. First, Article 5(1) expressly requires the use of adequacy criteria, directing Member States toward four policy goals—ensuring a decent standard of living, reducing in-work poverty, fostering social cohesion and upward convergence, and narrowing the gender pay gap. Second, Article 5(3) reinforces the adequacy dimension by allowing the use of indicative reference values, most notably 60% of the median wage or 50% of the average wage. Though formulated as optional, these benchmarks already serve as reference points in the majority of Member States.

Promises and Perils of Social Europe

The CJEU judgement confirms that EU social legislation – if procedurally grounded – can support upward wage convergence and bolster national collective bargaining systems. It validates the key promise of the EPSR that minimum wages must be fair, set in transparent manner, and be sufficient to ensure a decent standard of

living.

Yet, the immediate practical impact of the CJEU judgement is limited.

Across the EU, five Member States (Denmark, Sweden, Finland, Austria, and Italy) rely exclusively on collective bargaining in wage-setting. This means that, in the absence of any statutory rules on minimum wages, the adequacy procedures enshrined in Article 5 AMWD do not apply. Also, as clarified by the CJEU, nothing is the AMWD can be construed as imposing an obligation for those countries to introduce a statutory regime on minimum wages. Procedural rules deriving from Article 5(1) and (3) would still apply for the remaining countries.

All the more, nine Member States (Italy, Belgium, Austria, France, Spain, Finland, Sweden, Portugal, and Denmark) already meet the 80% threshold on collective bargaining coverage. As such, therefore, only the 18 remaining Member States are subject to the obligation provided by Article 4(2) AMWD, to establish an action plan to promote collective bargaining.

Conclusion

The CJEU's ruling resolves long-standing uncertainty surrounding the AMWD. By removing the provisions that would directly interfere with national wage-setting, the Court preserves the directive's core while deepening the constitutional foundations of EU social policy. This does not mean, however, that minimum wages across the EU will substantially increase.

The message is rather that EU social policy may structure procedures to enhance working conditions and empower labor institutions, which has sparked vigilant optimisms amongst first commentators. Still, rampant levels of in-work poverty and income inequality across the EU would suggest that the AMWD alone is not sufficient to restore social fairness.

The future of European wage setting will depend not only on legal limits, but on the capacity and ambition of both Member States and

European social partners to make adequate use of the space the CJEU protects and clarifies.

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