Luca Ratti

What is the Minimum Wage Directive Really About? An Analysis of Directive 2022/2041 on Adequate Minimum Wages, its Implications and Objectives

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1. *Introduction: the European Pillar of Social Rights (EPSR) and its legacy on the regulation of adequate minimum wages*

Directive 2022/2041/EU (hereinafter the AMWD) came as a response to growing concerns about wage disparity and in-work poverty within the EU. Rooted in the European Pillar of Social Rights (EPSR), the Directive is part of a broader strategy to promote upward social convergence and ensure that economic disparities do not erode social cohesion. This legislative measure also addresses the structural challenges faced by workers in securing wages that provide a decent standard of living, reinforcing the EU's commitment to improve living and working conditions.

Despite its political nature, the true watershed in addressing such objectives at EU level is constituted by the European Pillar of Social Rights (EPSR). The Pillar articulates key principles such as fair wages, secure employment, and equal opportunities that have significantly influenced the political agenda of the Von Der Leyen Commission 2019/2024.

In particular, Principle No. 6 of the Pillar sets out the worker's right to

a fair wage that guarantees a decent standard of living. It also expresses the two main objectives of adequate minimum wages: on the one hand, to meet the needs of workers and their families in the light of national economic and social conditions; on the other hand, to ensure access to employment and incentives to seek work. Finally, it adds that an adequate minimum wage should help combat in-work poverty. These statements, although without any legal effect of their own[1], enabled the European Commission to give impetus to the important legislative initiative that culminated in the adoption of Directive 2022/2041 on adequate minimum wages.

The innovation of Principle 6 extends beyond its literal scope, reflecting the EPSR's role in shaping EU social policy. Early critics argued that Principle 6 would merely urge Member States and social partners to strive toward EPSR commitments, constrained by the exclusion of "pay" from the scope of Article 153(5) TFEU[2]. However, the Commission's determination to implement the EPSR surmounted historical barriers to wage-related interventions. This shift, later formalized in the EPSR Action Plan[3], highlights Principle 6's programmatic character, encouraging a purposive interpretation of the Directive[4]. It remains that the EPSR's entitlements do not amount to enforceable rights, since the Pillar functions primarily as a compass to orient and concretise policy priorities. Therefore, the "right" to fair wages in Principle 6 must be regarded as guidance for EU policymakers rather than standalone individual right[5].

As it is clear from its title, Directive 2022/2041 embodies the vision announced in the EPSR, linking wage adequacy to broader socioeconomic goals. Rather than prescribing a uniform wage floor across the EU, the Directive prioritizes procedural harmonization, requiring Member States to adopt mechanisms for assessing and maintaining wage adequacy.

While the strive for adequacy is certainly the flagship element of the

[1] Garben, *Choosing a Tightrope Instead of a Rope Bridge - The Choice of Legal Basis for the AMW Directive*, in Ratti, Brameshuber, Pietrogiovanni (eds.), *The EU Directive on Adequate Minimum Wages: Context, Commentary and Trajectories*, Hart Publishing, 2024, p. 25.

[2] Garben, *The European Pillar of Social Rights: An Assessment of its Meaning and Significance*, in *CYELS*, 2019, 21, p. 101.

[3] EU Commission, The European Pillar of Social Rights Action Plan, COM(2021)102.

[4] Menegatti, *Much ado about little: The Commission proposal for a Directive on adequate wages*, in *ILLEJ*, 2021, 14, 1, p. 21.

[5] Barnard, *Are Social "Rights" Rights?*, in *ELLJ*, 2020, 11, 4, p. 357.

AMWD, its complex articulation reveals other important aspects that cannot be underestimated, for their influence on the legal systems of labour law of EU Member States. This article will unfold some such aspects with the aim to see whether the Directive is really about what its title seems to promise or is instead to be seen as an instrument to promote collective bargaining on wages in a context of significant decline of social dialogue at all levels. The article will first analyse the main objectives of the Directive and then confront them with its actual provisions and procedures. It will conclusively argue that an interpretation of the AMWD in the light of EU primary law would suggest considering that purpose as functional to the primary objective to improve living and working conditions.

2. *Core objectives and provisions of the AMWD*

The primary aim of the AMWD is to ensure that workers in the EU receive a wage that allows them to live in dignity. The Directive emphasises the importance of collective bargaining as a means to achieve wage adequacy and mandates the use of specific reference values to guide wage assessments.

Article 1 articulates the Directive's main objectives as establishing a framework for: "(a) adequacy of statutory minimum wages with the aim of achieving decent living and working conditions; (b) promoting collective bargaining on wage-setting; (c) enhancing effective access of workers to rights to minimum wage protection where provided for in national law and/or collective agreements"[6].

The Preamble of the Directive recalls the multiple positive effects of minimum wages: reducing poverty at national level, maintaining domestic demand and purchasing power, stimulating job creation, reducing wage inequality, the gender pay gap and in-work poverty. The minimum wage is all the more considered an important tool to support sustainable and inclusive economic recovery after periods of crisis.

Recitals 6 and 7 emphasise the role of minimum wages "in the protection of low-wage workers", which is "increasingly important and essential to foster a balanced, sustainable and inclusive economic recovery". The

[6] Cf. Kovács, *Subject matter (Article 1)*, in Ratti, Brameshuber, Pietrogiovanni (eds.), *cit.*, p. 142.

prevention and reduction of wage inequalities and the promotion of economic and social progress are express goals of a protection system based on the minimum wage with its widest dissemination and adequacy. Competition in the internal market must therefore be based on "high social standards, including a high level of worker protection, [and] the creation of quality employment". Recital 8 emphasises that when set at appropriate levels, minimum wages – whether determined by national legislation or collective agreements – "protect the income of workers, particularly the disadvantaged, and help to ensure a decent standard of living as recognised by the International Labour Organisation's Convention 131 on Minimum Wage Fixing. Minimum wages that ensure a decent standard of living (...) can contribute to poverty reduction at the national level, can help support domestic demand and purchasing power, strengthen work incentives, reduce wage inequalities, gender gaps and in-work poverty, and limit the fall in income in unfavourable periods".

Two basic pillars lay the foundation of the protections introduced by the AMWD: on the one hand, the coverage of collective bargaining; on the other hand, the adequacy of minimum wages.

Article 4 titled "Promotion of collective bargaining on wage setting" shows how much the Directive serves as a tool to strengthen collective bargaining across all Member States. As recalled in Recital 22, robust collective bargaining contributes to ensuring that adequate minimum wages provide workers with a decent standard of living. The way Article 4 pursues the goal to promote collective bargaining is entirely procedural, so that both Article 4(1) and 4(2) introduce obligations for the Member States to put in practice procedures aimed to facilitate collective bargaining on wage setting.

Article 5 outlines the procedural requirements for determining wage adequacy, which include consideration of the cost of living, general wage levels, productivity trends, and the distribution of wages. Notably, the Directive does not establish a uniform minimum wage. Instead, it empowers Member States to develop their own frameworks, provided they adhere to the principles of adequacy and fairness. This decentralised approach respects the diversity of economic conditions across the EU while promoting a common standard of social protection. The criteria set out in Article 5 do not result in a uniform level of adequacy of statutory minimum wages at European level. The interpretation (i.e. determination) of adequacy is therefore

left to the Member States, which may result in different levels of minimum wage protection from one Member State to another[7].

Other important provisions include the rule limiting variations and deductions from the minimum wage (Article 6), the measures for workers' access to the legal minimum wage (Article 8), the assurance that economic operators respect the wages set by collective agreements and legal minimum wages, if any, in the execution of public contracts or concession contracts (Article 9), the right of recourse and protection against unfavourable treatment or consequences (Article 12), and finally the obligation for Member States to provide for 'effective, proportionate and dissuasive' sanctions for violations of national provisions establishing minimum wage protection (Article 13).

From the above it may seem the three objectives of the AMWD – namely to ensure adequacy of statutory minimum wages, promote collective bargaining on wage-setting, and enhance workers' access to minimum wage protection – are equally balanced throughout the text. In fact, it is not the case.

From a purely quantitative point of view, the text of the directive contains a total of 60 references to 'collective bargaining', out of which collective bargaining is considered as: a right (5 times), as a complement to the right to organise (4 times), as a phenomenon to be promoted (7 times), to participate to (2 times) or to engage in (1 time). All the more, out of a total of 40 Recitals comprising the Directive's preamble, several of them – namely no. 6, 16, 18, 20, 22, 23, 24, 25, 31, and 33 – refer as such to collective bargaining.

In comparison, references to "adequacy" recur only 20 times, and 17 times on "adequate" as an attribute of minimum wages. But even these two terms are mostly referred to minimum wages provided through collective bargaining.

The quantitative consideration of the expressions mostly used in the body and preambles of the Directive triggers the question contained in the title of this paper: what is the AMWD really about?

[7] Cf. SAGAN, SCHMIDT, *Article 5*, in RATTI, BRAMESHUBER, PIETROGIOVANNI (eds.), *cit.*, p. 199.

3. *Enhancing trade union strength and collective bargaining*

A significant aspect of the AMWD is its emphasis on strengthening trade unions and enhancing their capacity to engage in effective bargaining. The Directive highlights the need for adequate resources, including access to information and financial support, to enable unions to represent workers' interests robustly. Measures such as tax deductions for union membership fees are proposed as incentives to increase union participation.

The protection of union representatives from discrimination and unjust dismissal is another pivotal provision. By safeguarding the rights of union leaders, the Directive seeks to create a favourable environment for collective bargaining, ensuring that workers can negotiate wages and working conditions without fear of reprisal.

All the more, the AMWD underscores the importance of collective redress in enforcing wage standards. Individual workers often face significant barriers when attempting to assert their rights, such as legal costs and power imbalances with employers. The Directive empowers trade unions to initiate legal action on behalf of workers, facilitating the enforcement of collective agreements and enhancing access to justice. This provision acknowledges the essential role that trade unions play in safeguarding workers' rights. By enabling collective redress, the Directive strengthens the legal framework for wage protection and promotes greater accountability among employers.

Therefore, not only Article 4 on the promotion of collective bargaining on wage setting, but also Article 7 on the involvement of social partners at decision-making level, Article 8 on effective access, and Article 12 on redress stand out as fundamental provisions aimed to support, strengthen, and promote collective bargaining as a labour market institution.

In fact, it is well established that the effectiveness of collective bargaining depends not only on the strength of trade unions but also on the cohesiveness of employers' organizations. In many central and eastern European countries, employer associations are fragmented and lack the capacity to engage in sectoral bargaining. The AMWD addresses this challenge by encouraging the formation of strong, representative employer organizations.

Examples of successful interventions include Austria's and Slovenia's chamber systems, where compulsory membership for employers has bolstered sectoral bargaining. These systems provide a model for other Member

States seeking to enhance the regulatory capacity of employer organizations and promote more comprehensive wage agreements.

Sectoral bargaining is another central element of the AMWD, as it ensures that collective agreements setting wages do cover a broad spectrum of workers. The Directive encourages the use of multi-employer collective agreements and leverages public procurement as a tool to support collective bargaining. Article 9, in particular, mandates that public contracts consider the compliance of companies with collective agreements, creating economic incentives for adherence to wage standards. This strategic use of public procurement highlights the Directive's innovative approach to labour market regulation. By linking wage adequacy to public spending, the AMWD seeks to promote fair labour practices and foster a culture of social responsibility among employers.

To prevent wage avoidance and ensure that all workers benefit from adequate wages, the AMWD advocates the use of extension mechanisms. These mechanisms make collective agreements binding on all employers in a sector, even those not directly involved in negotiations. In practice, evidence shows both effective and ineffective examples of extension practices, which illustrate the challenges of implementing such measures uniformly across the EU.

The regulatory capacity of national authorities is crucial in this context. Member States must develop robust oversight mechanisms to prevent employers from circumventing wage agreements, ensuring that the Directive's objectives are met in practice (Article 13).

All the aforementioned aspects may lead to raise a fundamental competence issue. Should the AMWD be interpreted as meaning that its main purpose is in fact to promote collective bargaining, is the legal basis chosen by the EU legislature – namely Article 153(1)(b) TFEU on "working conditions" – the correct one? The question is far from being fictional.

The claim filed by Denmark in case C-19/23 – mainly focused on asking to the CJEU whether the AMWD is correctly based on Article 153(1) despite the "pay" exception as per Article 153(5) –, touches also on the specific issue here discussed, namely whether Article 153(1) is respected when an EU Directive ultimately aims to intervene in the regulation of collective bargaining under a "working conditions" legal basis.

4. *The competence conundrum beyond Article 153(5) TFEU*

Immediately after the approval of the AMWD, two dissenting Member States in the Council had announced their wish to claim for its annulment based on an alleged violation of the competence limits. Already in January 2023, the Kingdom of Denmark filed such claim, later supported by Sweden. The claims raised in case C-19/23 resulted to be based on the following questions.

"In support of the principal claim, the Government claims in the first place that, in adopting the contested directive, the defendants infringed the principle of the conferral of powers and acted in breach of Article 153(5) TEU. The contested directive interferes directly with the determination of the level of pay in the Member States and concerns the right of association, which is excluded from the competence of the EU legislature pursuant to Article 153(5) TFEU.

In support of its principal claim, the Government submits, in the second place, that the contested directive could not validly be adopted on the basis of Article 153(1)(b) TFEU. That is because the Directive pursues both the objective set out in Article 153(1)(b) TFEU and the objective set out in Article 153(1)(f) TFEU. The latter objective is not ancillary to the first and presupposes the use of a decision-making procedure different from that followed when the contested directive was adopted (see Article 153(2) TFEU). The two decision-making procedures are incompatible since the adoption of acts under Article 153(1)(f) TFEU – in contrast to those adopted under Article 153(1)(b) TFEU – requires unanimity (see Article 153(2) TFEU).

In support of its claim put forward in the alternative, the Government submits that, in adopting Article 4(1)(d) and Article 4(2) of the contested directive, the defendants infringed the principle of the conferral of powers and acted in breach of Article 153(5) TFEU. Those provisions interfere directly with the determination of the level of pay in the Member States and concern the right of association, which is excluded from the competence of the EU legislature pursuant to Article 153(5) TFEU"[8].

Most doctrinal attention has been focused – rightly so – on the first argument, based on an alleged violation of Article 153(5) TFEU. This claim

[8] Action brought on 18 January 2023 - *Kingdom of Denmark v European Parliament and Council of the European Union* (Case C-19/23).

would decide of the life or death of the AMWD as such. In case the CJEU would uphold that argument, the entire edifice of the Directive will crumble[9].

Instead, more subtle is the perspective opened by the second claim, linked to the existence, in Article 153, of a different legal basis dealing with "representation and collective defence of the interests of workers and employers, including co-determination" (Article 153(1)(f)). The claim is based on the fact that such competence would not only be different from "working conditions" as per Article 153(1)(b) but would also have required unanimity instead of qualified majority, in accordance with a special legislative procedure, after consultation of the European Parliament and the Economic and Social Committee and the Committee of the Regions (Article 153(2) last part)[10].

EU secondary law based on Article 153(1)(f) is so far limited to Directive 2002/14 on information and consultation rights[11] and Directive 2009/38 on European Works Councils[12]. Despite being different in nature, they are both typical harmonisation directives aiming at establishing minimum requirements applicable throughout the EU while not preventing Member States from laying down provisions more favourable to employees[13]. Dealing with employees representative bodies, those directives encourage Member States to ensure that an appropriate set of measures is in place to support and facilitate their relevant rights[14].

[9] GARBEN, *Choosing a Tightrope Instead of a Rope Bridge – The Choice of Legal Basis for the AMW Directive*, in RATTI, BRAMESHUBER, PIETROGIOVANNI (eds.), *cit.*, p. 25.

[10] Cf. ALES, *Art. 153 TFEU*, in ALES, BELL, DEINERT, ROBIN-OLIVIER (eds.), *International and European Labour Law*, Hart/Beck/Nomos, 2018, p. 163.

[11] Directive 2002/14/EC of the European Parliament and of the Council of 11 March 2002 establishing a general framework for informing and consulting employees in the European Community.

[12] Directive 2009/38/EC of the European Parliament and of the Council of 6 May 2009 on the establishment of a European Works Council or a procedure in Community-scale undertakings and Community-scale groups of undertakings for the purposes of informing and consulting employees (Recast).

[13] Recital 18, Directive 2002/14. Recital 9, Directive 2009/38.

[14] Cf. e.g., Article 11, Directive 2009/38.

5. *A three-steps test*

While confronting the aforementioned directives with the AMWD, allegedly based on the same legal basis, an assessment must be made with regards, first of all, (i) to the type of measures introduced by the latter. Once clarified those measures, it will have to be determined (ii) whether in fact they are directed to regulate (in the form of harmonisation measures) the topic of "representation and collective defence of the interests of workers and employers, including co-determination" (Article 153(1)(f)). In case of positive assessment of the two previous steps, it should be considered (iii) whether the "representation and collective defence" legal basis results to be a proper distinct legal basis in the architecture of the AMWD or, instead, can be qualified as secondary to the "working conditions" one.

i) The AMWD focuses on promotional measures mainly in its Article 4. The obligations for Member States deriving therefrom can be divided into two distinct categories. The first, comprising core obligations, originates from the Commission's proposal and includes two primary duties. Member States must, on the one hand, promote the development and strengthening of social partners' capacity to engage in collective bargaining on wage setting, particularly at the sectoral or cross-industry level; and, on the other hand, encourage constructive, meaningful, and informed wage negotiations between social partners, ensuring equal footing and access to adequate information (Article 4(1)(a)-(b)). Additionally, Article 4 imposes two further primary obligations: safeguarding the right to collective bargaining on wage setting; and protecting workers and trade union representatives from retaliation, provisions that directly transpose Articles 1 and 2(1) of ILO Convention No. 98 (1949).

Secondary obligations under Article 4(2) arise when a Member State's collective bargaining coverage rate falls below 80%. In such cases, the Member State must establish a framework to foster collective bargaining, either through legislation developed in consultation with social partners or by autonomous agreement. Moreover, an action plan must be introduced to promote collective bargaining, outlining specific measures with a clear scope aimed at progressively increasing coverage while respecting the social partners' collective autonomy.

ii) An overall consideration of Article 4 allows to argue that, while aiming at the promotion of collective bargaining on wage setting, the Member

States obligations deriving therefrom do not have an impact *stricto sensu* on the "representation and collective defence of the interests of workers and employers". Such interests, in fact, are defended and represented according to the legislation and practices typical of each Member State. Several provisions of the Directive aim to meticulously pay attention to safeguard social partners' collective autonomy and preserve the specificities of each system of industrial relations. This aspect is made evident by the many references in the same AMWD to what the directive *does not* do and what Member States are entitled to maintain[15].

Yet, one could also claim that an interpretation based on a broad reading of the "representation and collective defence" legal basis as per Article 153(1)(f) may be founded when considering the overall function of the AMWD vis-à-vis domestic systems of employees' representation. In such case, an argument would be that, *in concreto*, collective bargaining on wage setting cannot be really promoted without some form of intervention of the actors involved therein.

[15] Cf. Article 1(2) ("This Directive shall be without prejudice to the full respect for the autonomy of the social partners, as well as their right to negotiate and conclude collective agreements"); Article 1(3) ("In accordance with Article 153(5) TFEU, this Directive shall be without prejudice to the competence of Member States in setting the level of minimum wages, as well as to the choice of the Member States to set statutory minimum wages, to promote access to minimum wage protection provided for in collective agreements, or both"); Article 1(4) ("Nothing in this Directive shall be construed as imposing an obligation on any Member State:

(a) where wage formation is ensured exclusively via collective agreements, to introduce a statutory minimum wage; or (b) to declare any collective agreement universally applicable"); Article 1(5) (the acts of the Member States concerning minimum wages of seafarers "shall be without prejudice to the right to collective bargaining and to the possibility to adopt higher minimum wage levels"). See also the iteration of the negative form ("this directive shall not") in the narrative of draft Preamble 19 (emphasis added): "this Directive *neither* aims to harmonise the level of minimum wages across the Union *nor* does it aim to establish a uniform mechanism for setting minimum wages. It *does not* interfere with the freedom of Member States to set statutory minimum wages or to promote access to minimum wage protection provided for in collective agreements, in accordance with national law and practice and the specificities of each Member State and in full respect for national competences and the social partners' right to conclude agreements. This Directive *does not* impose and *should not* be construed as imposing an obligation on the Member States where wage formation is ensured exclusively via collective agreements to introduce a statutory minimum wage or to declare collective agreements universally applicable. Moreover, this Directive *does not* establish the level of pay, which falls within the right of the social partners to conclude agreements at national level and within the relevant competence of Member States".

iii) This being the case, one should consider the third step mentioned above, concerning whether the "representation and collective defence" legal basis is equally important as the 'working conditions' one in the overall architecture of the AMWD.

In several occasions, the EU legislature decided to base Directives on a dual legal basis, examples range from internal market, to criminal matters[16]. In the specific field of social policy, two examples stand out as particularly noteworthy. Directive (EU) 2019/1158 on Work-Life Balance for Parents and Carers is based on Article 153(1)(i) and (2)(b) TFEU (social policy) and Article 157(3) TFEU (gender equality), its aim being to improve work-life balance while promoting gender equality in employment and caregiving responsibilities. Directive 2024/2831 on Improving the Working Conditions in Platform Work is based on Article 153(1)(c) and (2)(b) TFEU (social policy) and Article 16 TFEU (data protection), its aim being improving the working conditions of platform workers while protecting personal data of persons performing platform work. In both directives, but particularly in this latter on platform work, it is hard to judge whether one legal basis is predominant (therefore primary) and the other subservient (or secondary), reason why the choice for a dual legal basis appears entirely compliant with EU law.

The case of the AMWD seems more intricate. In order for a Treaty provision to stand out as proper legal basis, there must be an autonomous set of rules dictated by the directive that stems from such legal basis and would be deprived of significance if put under another legal basis. If examination of an EU legislative measure "reveals that it pursues a twofold purpose or that it has a twofold component and if one of those is identifiable as the main or predominant purpose or component, whereas the other is merely incidental, the act must be based on a single legal basis, namely that required by the

[16] Cf. Directive 2003/87/EC Establishing the EU Emissions Trading System (ETS), based on Article 192(1) TFEU (environment) and Article 114 TFEU (internal market); Directive 2010/75/EU on Industrial Emissions, based on Article 192(1) TFEU (environment) and Article 114 TFEU (internal market); Directive (EU) 2016/680 on the Protection of Personal Data in Criminal Matters, based on Article 16 TFEU (data protection) and Article 87(2)(a) TFEU (police cooperation); Directive 2009/128/EC on the Sustainable Use of Pesticides, based on Article 192(1) TFEU (environment) and Article 43 TFEU (common agricultural policy); Directive 2014/65/EU (MiFID II), based on Article 53(1) TFEU (freedom to provide services) and Article 114 TFEU (internal market).

main or predominant purpose or component"[17]. On the contrary, as clarified by the CJEU, the use of dual legal bases requires that the objectives pursued are inextricably linked and do not subordinate one legal basis to the other. Therefore, dual legal bases are permissible only when the components of a legislative act are indissociable and pursue multiple complementary objectives[18].

In the case of the AMWD, it does not seem possible to identify as necessary the legal basis of "representation and collective defence". Everything in the Directive amounting to supportive measures to representation and collective defence (e.g., Article 4(1)(d) and Article 4(2)) is functionally directed towards the overall objective of improving working conditions of employed persons in the EU, in particular for what concerns their minimum wages. All the more, the significant emphasis put by the Directive on the need to promote collective bargaining derives primarily from the assumption made in the Directive's Preambles, for which high collective bargaining coverage helps reduce inequalities[19].

Consequently, the "working conditions" legal basis results to be sufficiently broad to accommodate all measures directed to achieve the objectives listed in Article 1. Such objectives do not need an autonomous legal basis, "representation and collective defence" being functional and subordinate to achieve improved "working conditions". The improvement of "working conditions" is evidently the main or predominant purpose or component of the AMWD, therefore it appears correct that the Directive is based on Article 153(1)(b).

[17] CJEU, Case C-36/98 *Spain v Council*, paragraph 59; Case C-211/01 *Commission v Council*, paragraph 39; Case C-338/01 *Commission v Council*, paragraph 55.

[18] Cf. e.g., Case C-178/03, *Commission v. Parliament and Council*, paragraph 43.

[19] According to Recital 13, "Minimum wage protection provided for in collective agreements in low-paid occupations is adequate and therefore provides a decent standard of living in most cases, and has proven to be an effective means by which to reduce in-work poverty." Furthermore, according to Recital 25, "Member States with a high collective bargaining coverage tend to have a small share of low-wage workers and high minimum wages. Member States with a small share of low-wage earners have a collective bargaining coverage rate above 80%." On this point cf. *si licet* Ratti, *La riduzione della povertà lavorativa nella Direttiva sui salari minimi adeguati*, in *VTDL*, 2022, pp. 53-54.

6. *Conclusion: The broader implications of the AMWD*

Directive 2022/2041 represents a significant step toward achieving wage adequacy across the EU, but it is not without its limitations. By focusing on procedural harmonization, the Directive respects national sovereignty on wage setting while promoting the improvement of working conditions through both legislation and collective bargaining. The lack of a uniform wage floor is fully justified by the tight legal basis deriving from Article 153(1)(b) TFEU read in the light of the limitations deriving from Article 153(5) TFEU.

Several Member States have undertaken reforms to align with the AMWD's requirements[20]. In Ireland, for example, the government has established a tripartite working group to draft legislation that incorporates the Directive's adequacy criteria[21]. Germany, on the other hand, has experienced a renewed debate on wage adequacy, with significant increases to the minimum wage in response to inflationary pressures. Romania introduced measures to strengthen collective bargaining[22].

Italy's approach to wage regulation remains subject to intense debate. Lacking a statutory minimum wage, Italy relies on collective bargaining to set wage standards. The AMWD does not impose direct obligations, but the Directive's influence is evident on the ongoing discussions about wage adequacy and working poverty, particularly in the light of recent rulings by the Italian Court of Cassation that have referenced the adequacy criteria outlined in the AMWD[23], raising questions about the role of EU law in shaping domestic wage policies.

When asking ourselves what the AMWD is really about, one should consider the main objectives pursued by the legislature and read them in the

[20] Cf. MÜLLER, *Dawn of a New Era? The Impact of the European Directive on Adequate Minimum Wages in 2024*, ETUI Policy Brief 2024.02 (https://www.etui.org/sites/default/files/2024-03/Dawn%20of%20a%20new%20era-The%20impact%20of%20the%20European%20Directive%20on%20adequate%20minimum%20wages%20in%202024_2024%20%281%29.pdf).

[21] Cf. DOHERTY, *Make me good…just not yet? The (potential) impact of the Adequate Minimum Wage Directive*, in *ILLEJ*, 2024, 17, 1, p. 211 ff.

[22] MÜLLER, SCHULTEN, *Not Done Yet - Applying the Minimum Wage Directive*, in Social Europe, 2.5.2024.

[23] Cass. 2 October 2023 no. 27711; Cass. 2 October 2023 no. 27713; Cass. 2 October 2023 no. 27769; Cass. 10 October 2023 no. 28320; Cass. 10 October 2023 no. 28321; Cass. 10 October 2023 no. 28323.

light of EU primary law, in particular its legal basis. The overall architecture of the directive reveals important features that, while valuing supportive measures to collective bargaining, makes them functional and subordinate to the improvement of working conditions.

The AMWD's success will depend on the willingness of Member States to implement meaningful reforms and the ability of the EU to enforce compliance. Excluding that a fundamental right to receive a minimum wage can be derived from EU primary sources[24], the role of the Court of Justice in interpreting the Directive will be crucial. This will happen already in the annulment case C-19/23 on the legal basis, but also future cases coming from requests for preliminary ruling may contribute to shape the future of wage regulation. Yet, for now, the emphasis remains on national-level action in the strive to tackle income inequalities and grant wage adequacy.

[24] Cf. Brameshuber, *Constitutionalisation and Social Rights – A Fundamental Right to Adequate Minimum Wages?* in Ratti, Brameshuber, Pietrogiovanni (eds.), *cit.*, p. 126; Bogg, *Art. 31 – Fair and Just Working Conditions,* in Peers, Hervey, Kenner, Ward (eds.), *The EU Charter of Fundamental Rights*, Beck/Hart/Nomos, 2014, p. 845; Ales, *Article 31 CFREU*, in Ales, Bell, Deinert, Robin-Olivier (eds.), *cit.*, p. 1207.

Abstract

Directive 2022/2041 on Adequate Minimum Wages (AMWD) is a landmark development in European Union labour law, aimed at strengthening wage standards and enhancing collective bargaining mechanisms across Member States. This article provides a comprehensive analysis of the Directive, examining its origins, objectives, and impact, with the aim to assess its validity from a legal basis perspective.

Keywords

Minimum wages, Collective bargaining, EU social dialogue.