



THE EU MINIMUM WAGE DIRECTIVE AND THE BATTLE FOR SOCIAL EUROPE:

Why Denmark's case at the ECJ
matters for the future of
Ireland and the EU

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Executive Summary

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Social Europe—the idea that economic integration must go hand-in-hand with social protections—has been central to the European project since its inception. From the founding treaties of the European Coal and Steel Community (1951) and the European Economic Community (1957), European integration was never simply about market integration. It was about rebuilding a continent ravaged by war by embedding economic cooperation within a political framework that could ensure rising living standards.

Though the Social Europe agenda has waxed and waned over the decades, it has remained a vital source of legitimacy for the EU. Following a period of austerity and market liberalisation that undermined worker protections, the adoption of the European Pillar of Social Rights (EPSR) in 2017 marked a significant turning point. Arguably the most ambitious legislative initiative to emerge from this renewed agenda is the Adequate Minimum Wages Directive (AMWD).

Adopted in 2022, the AMWD sets out a framework to ensure minimum wages are adequate and promotes collective bargaining across the EU. It does not mandate a specific wage level but establishes clear procedural standards for wage-setting, and introduces obligations to promote collective bargaining, in particular in countries where collective bargaining coverage is below 80%. It aims to reduce in-work poverty, foster upward convergence in living standards, and reinforce the legitimacy of the EU project.

This directive represents a milestone in the development of Social Europe. As legal scholars have noted, it is "light years" ahead of earlier efforts—an unprecedented move by the EU to support national collective bargaining systems and strengthen wage adequacy without directly setting wages.

The directive has already had measurable effects. Many EU countries have increased their minimum wages significantly and aligned national frameworks with the directive's principles. In Ireland, the minimum wage has increased by 34% from 2020 to 2025, and the government committed to meeting the 60% of median wage benchmark by 2026. However, collective bargaining coverage remains low (approximately 34%), and the directive's required national action plan on collective bargaining has yet to be published.

However, this progressive directive now faces an existential threat. In January 2025, Advocate General Nicholas Emiliou of the European Court of Justice (ECJ) issued an opinion in the case *Kingdom of Denmark v. European Parliament and Council of the EU*, recommending that the AMWD be annulled in full. His core argument is that the directive exceeds EU legislative competence, violating the "pay" exclusion in Article 153(5) of the Treaty on the Functioning of the European Union (TFEU).

Emiliou's argument hinges on the claim that because the "object" of the directive concerns wages, it falls outside the EU's legal competence—even though the directive neither sets pay nor mandates specific wage levels. His interpretation dismisses decades of case law that understand the pay exclusion restrictively, and overlooks longstanding EU legislation that regulates pay-related aspects of working conditions, including maternity benefits, paid leave, and equal pay.

The Court's upcoming decision will have profound consequences: a ruling against the AMWD could severely curtail the EU's ability to address poverty, inequality, and labour market insecurity—key drivers of discontent that are fuelling far-right populism and eroding trust in European integration.

At stake is far more than one directive. The ECJ's upcoming decision will determine whether Social Europe remains a meaningful pillar of European integration or becomes an empty promise. The AMWD is a vital tool in the effort to restore trust, fairness, and social progress within the EU. Upholding it is essential for preserving the Union's credibility as a force for social justice and democratic legitimacy.

Introduction

Introduction

Since its inception, with the creation of the European Coal and Steel Community (1951) and the European Economic Community (1957), the project of European integration has never been simply about trade. At its core has been providing a framework that combined market integration with social safeguards. Over the years, this ambition has evolved, but in recent decades, the focus on ensuring that economic integration leads to rising living standards has diminished. Despite "Social Europe" being one of the EU's most important sources of legitimacy, market liberalization and integration have repeatedly been prioritised over living standards, working conditions, and social well-being.

The revival of the Social Europe agenda since the launch of the European Pillar of Social Rights (EPSR) in 2017 is therefore very welcome. The Adequate Minimum Wages Directive (AMWD)¹ is a central feature of this revived agenda. It seeks to improve living and working conditions and reduce in-work poverty by providing a framework for setting minimum wages and promoting collective bargaining over wages. However, Advocate General (AG) Emiliou's recent opinion in the Denmark case before the European Court of Justice (ECJ), which recommends the annulment of the directive, directly challenges this ambition. He argues that the directive violates Article 153(5) TFEU, which excludes "pay" from the EU's legislative competence, and that the directive should therefore be annulled in its entirety. On the surface, this might appear to be a straightforward application of treaty law. Yet, upon closer examination, Emiliou's argument is based on a flawed and highly selective interpretation of EU competence, one that disregards both past legal precedent and the broader historical trajectory of Social Europe. His reasoning effectively seeks to rewrite the boundaries of EU social policy, suggesting that the EU has almost no role in shaping wage structures, even though previous EU directives have regulated aspects of pay, from maternity leave allowances to equal pay legislation.

This is not merely a legal debate. If AG Emiliou's reasoning is followed by the Court of Justice, it would set a dangerous precedent, severely restricting the EU's ability to legislate on social issues at a time when public trust in European integration depends on its capacity to protect workers. The interwar period demonstrated the devastating consequences of trying to push through economic integration without respect for democracy and social protections. Today, as the far-right gains ground by exploiting discontent over economic insecurity and inequality, the EU's role in safeguarding fair labour conditions is more critical than ever. Weakening Social Europe now would not only betray European progressive traditions but also risk fuelling the very forces that threaten the European integration project itself.

This report critically examines AG Emiliou's argument, exposing its legal weaknesses and highlighting its broader political consequences. At stake is not just the AMWD but the very idea of Social Europe, and, with it, the EU's ability to be a legitimate and credible force for social justice in an era of rising populism and economic uncertainty.

1 [Directive \(EU\) 2022/2041 of the European Parliament and of the Council of 19 October 2022 on adequate minimum wages in the European Union](#), OJ L 275, 25.10.2022, p. 33–47.

Part I: The Importance of Social Europe

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30 years of crisis

The roots of the European Union lie in the post-war reconstruction project. From 1914 to 1945, Europe was engulfed in chaos, marked by devastating war, 70 million deaths, and persistent instability as the continent faced unparalleled economic and political crises.

At the heart of this long crisis lay a fundamental contradiction: over the preceding century capitalism had dramatically expanded society's productive capacity, yet it had also created a large, disenfranchised working class with few economic resources beyond their labour. But workers began to organise, forming unions and political movements to demand rights.² Their struggles led to critical victories, including expanded suffrage³, workplace protections⁴, and increased state intervention in the economy.⁵

During the interwar years, economic governance shifted as governments became more responsive to workers' needs, making the old model—where workers bore the brunt of economic downturns through unemployment, wage cuts, and declining living standards—increasingly untenable. As Beth Simmons put it, the central question became "Who Adjusts?"⁶

Policymakers sought to restore the pre-WWI liberal economic order by returning to the gold standard, removing wartime trade barriers, and expanding international trade. However, these efforts largely failed. Instead of stabilizing the economy, they exacerbated volatility. The subsequent return of tariffs stifled trade rather than reviving it.⁷

This economic shift was starkly reflected in trade patterns. Between 1870 and 1913, Western European merchandise exports grew at an average annual rate of over 3%. However, from 1913 to 1950, trade volumes contracted, highlighting the deep disruptions that war, protectionism, and economic mismanagement had inflicted on the global economy.

2 In the late 19th century union density in most Western European countries was below 5%, but in the interwar period it grew to over 30%. See Bain, George Sayers, and Robert Price. *Profiles of Union Growth: A Statistical Portrait of Eight Countries*. Oxford: Basil Blackwell, 1980.

3 In Western Europe before 1880, fewer than 15% of voting-age individuals had the right to vote, by the interwar period—before the fascist counterrevolution—nearly all Western European states had achieved democratic governance, with voting rights extending to over 93% of the voting-age population. (Here I'm looking at twelve countries: Austria, Belgium, Denmark, Finland, France, Germany, Italy, the Netherlands, Norway, Sweden, Switzerland, and the United Kingdom. The data ultimately comes from Flora (1983), Flora et al. (1983) and Mitchell (1998). But I've grabbed it from Aidt, Toke S., Gabriel Caprettini, and Francesco Zanardi. "Democracy Comes to Europe: Franchise Extension and Fiscal Outcomes 1830–1938." *European Economic Review* 50, no. 2 (2006): 249–283.)

4 Before 1870, almost no European country had pro-worker labour regulations. But between 1870 and 1914, governments introduced factory inspections, workplace safety laws, restrictions on child labour, and limits on working hours. Once established, these protections were continuously strengthened. The state also took on a greater role in social welfare, introducing accident, unemployment, sickness, and old-age insurance. See Huberman, Michael. *Odd Couple: International Trade and Labor Standards in History*. New Haven: Yale University Press, 2012.

5 Before 1880, government spending accounted for less than 10% of total expenditure in Western European economies. By the interwar period, it had more than doubled to over 20%. See footnote 2.

6 Simmons, Beth A. *Who Adjusts? Domestic Sources of Foreign Economic Policy During the Interwar Years*. Princeton: Princeton University Press, 1994.

7 Eichengreen, Barry. *Golden Fetters: The Gold Standard and the Great Depression, 1919–1939*. Oxford: Oxford University Press, 1992.

Table 1. Growth in Volume of Merchandise Exports (Annual average compound growth rates)

	1870–1913	1913–1950	1950–1973	1973–1998
Western Europe	3,24	–0.14	8,38	4,79

Source: Maddison, Angus. *The World Economy*. Paris, France: OECD, 2006, 127.

European Integration has always been a social project

By the end of World War II, it was clear that rebuilding the economy on the model of the pre-WWI liberal economic order was no longer viable.

In August 1941, Winston Churchill and President Roosevelt established the *Atlantic Charter*, an eight-point blueprint for postwar reconstruction. At the heart of this plan was a commitment to lowering trade barriers and a recognition of the need for economic cooperation. The Charter embraced a rather social democratic vision that aimed to “bring about the fullest collaboration between all nations in the economic field with the object of securing, for all, improved labour standards, economic advancement and social security... and which will afford assurance that all the men in all the lands may live out their lives in freedom from fear and want.”⁸

It was widely understood that increasing international trade and ensuring currency stability were not purely economic goals. They were inseparable from political questions of democracy and social concerns about securing high and stable living standards. The need to “embed” trade liberalization within national democratic systems, with supranational oversight and policies that ensured rising living standards was clear to all.⁹

The ECSC, the EEC and Social Europe

This necessity also helps explain a seemingly puzzling aspect of European integration: why did a series of trade agreements require such an extensive institutional framework? To manage a trade agreement on coal and steel, the Treaty of Paris (1951) laid the foundation for the modern European Union, creating key institutions: a High Authority (the precursor of the European Commission), a Common Assembly (the precursor of the European Parliament), a Council of Ministers and a Court of Justice (both of which continue under similar names). These institutions were adopted by the European Economic Community created by the Treaty of Rome (1957).¹⁰

Unlike the simple free trade agreements of the 19th century, these postwar European Treaties were highly political agreements that were also concerned with their impact on workers and families. The Treaty of Paris, which established the European Coal and Steel Community (ECSC), for example, focused heavily on the social challenges of economic integration. A brief look at Title III, the core of the Treaty, makes this clear, with provisions dedicated to issues such as “the possibilities of reemployment... of workers set at liberty by the evolution of the market or by technical

⁸ [The Atlantic Charter](#), 14 August 1941.

⁹ See Ruggie, John Gerard. “International Regimes, Transactions, and Change: Embedded Liberalism in the Postwar Economic Order.” *International Organization* 36, no. 2 (1982): 379–415 for a classic discussion of postwar “embedded liberalism”.

¹⁰ The Treaty of Rome has since been renamed the “Treaty on the Functioning of the European Union” and is one of the two most important treaties of the European Union (EU), the other being the Maastricht Treaty (1992), officially known as the Treaty on European Union.

transformations" and "the appraisal of the possibilities of improving the living and working conditions of the labour force... and of the risks which menace such living conditions."¹¹

At the centre of the European Coal and Steel Community were the coalfields of Belgium. Historian Alan Milward, in his seminal study of the negotiations leading to the creation of the ECSC and EEC, describes Belgian participation in the ECSC as deeply political. He writes:

*"The Treaty of Paris can be understood not just as the diplomatic substitute for a peace treaty, but also as the moment when Belgium formally entered the mixed economy... It ratified the shift to public responsibility in management, to the incorporation of the labour force into that responsibility, and to the commitment of the state to welfare and employment."*¹²

The same themes were central to the Treaty of Rome, which created the European Economic Community (EEC), the foundation of today's European Union (EU). While some have criticised the Treaty arguing it limited European institutions' ability to intervene in the social sphere and assumed that market integration alone would bring about improved social rights and employment levels.¹³ But, compared to previous trade agreements, the Treaty and its negotiations are notable for the significant focus placed on addressing the living conditions of workers and farmers.

The signatories committed to ensuring "the application of the principle of equal remuneration for equal work as between men and women workers" across member states within four years. They also pledged to "maintain the existing equivalence of paid holiday schemes" and aimed to strengthen cooperation between member states on employment, labour law and working conditions, vocational training, social security, workplace safety, industrial hygiene, the right of association, and collective bargaining between employers and workers. While progress on these items was quite limited, their inclusion in the Treaty marks a change from earlier international trade agreements that ignored these social questions.¹⁴

Additionally, the Treaty established a social fund to address job displacement caused by trade liberalization and introduced a large-scale financial support program for farmers and agricultural workers.¹⁵

Regardless of how successful these efforts were, protecting and improving workers' and farmers' living conditions was a central focus of European integration from the very beginning.

11 [Treaty Constituting the European Coal and Steel Community](#), signed on 18 April 1951, entered into force on 23 July 1952.

12 Milward, Alan S. *The European Rescue of the Nation-State*. Berkeley: University of California Press, 1992, p.83.

13 Ratti, Luca. "The Directive on Adequate Minimum Wages and the Revival of a European Social Union." In *The EU Directive on Adequate Minimum Wages: Context, Commentary and Trajectories*, edited by Luca Ratti, Elisabeth Brameshuber, and Vincenzo Pietrogiovanni, 105-118. Hart Publishing, 2024.

14 [Treaty of Rome \(Treaty Establishing the European Economic Community\)](#), signed on 25 March 1957, entered into force on 1 January 1958. See in particular Art. 118.

15 Ibid.

The Evolution of Social Europe: Between Ambition and Reality

European integration has never been simply a matter of trade and commerce. It has always been a deeply political and social project, concerned with the impact of economic integration on living standards. The Treaty of Paris (1951) and the Treaty of Rome (1957) were primarily designed to protect the ability of national governments to intervene in the economy to ensure good living conditions. But, they did not set out to establish a centralised European mechanism for social policy. While there was a commitment to "strengthen cooperation" between member states on social and labour issues, there was little intention to use European institutions to directly intervene in national economies to promote these aims.

Over time, however, concerns grew that the economic had become "decoupled" from the social—that economic integration was advancing without necessarily improving living standards.¹⁶ This issue became more pronounced as European integration deepened, but it was recognised early in the process.

The Early Social Europe Agenda

As early as the 1969 Hague Summit, the concept of "Social Europe" began to gain attention. This led to the Paris Summit of 1972, which in turn resulted in the 1974 Social Action Programme, a significant early attempt to address social policy at the European level.¹⁷ However, despite the political momentum, the legislative impact was modest.¹⁸ The most significant achievements were two directives focused on gender equality in the workplace: "The Equal Pay Directive"¹⁹ and the "The Equal Treatment Directive".²⁰ Also worth mentioning as part of this era of Social Europe legislation are the directives relating to worker protection during business restructuring, which addressed issues such as workers' rights during collective redundancies, transfers of undertakings, and insolvency.²¹

The 1980s and the Single Market

By the 1980s, enthusiasm for state intervention in the economy had begun to wane in many countries, particularly notable with the election of Margaret Thatcher in Britain. This decade also marked the only period in which Britain played a leading role in shaping the European integration agenda, with its support for developing the single market through the Single European Act (1986).

16 Scharpf, Fritz. "The European Social Model: Coping with the Challenges of Diversity." *Journal of Common Market Studies* 40, no. 4 (2002): 646.

17 Brown, T. (2012). *Something worth working for: The emergence of the 1973 Social Action Programme*. Dublin: Institute of International and European Affairs (IIEA).

18 Dinan, Desmond. *Ever Closer Union: An Introduction to European Integration*. 4th ed. London: Palgrave Macmillan, 2010, p.422.

19 [Directive 75/117/EEC of 10 February 1975 on the approximation of the laws of the Member States relating to the application of the principle of equal pay for men and women](#), OJ L 45, 19.2.1975.

20 [Directive 76/207/EEC of 9 February 1976 on the implementation of the principle of equal treatment for men and women as regards access to employment, vocational training and promotion, and working conditions](#), OJ L 39, 14.2.1976.

21 [Directive 75/129/EEC of 17 February 1975 on the approximation of the laws of the Member States relating to collective redundancies](#), OJ L 48, 22.2.1975; [Directive 77/187/EEC of 14 February 1977 on the approximation of the laws of the Member States relating to the safeguarding of employees' rights in the event of transfers of undertakings, businesses or parts of businesses](#), OJ L 61, 5.3.1977; [Directive 80/987/EEC of 20 October 1980 on the approximation of the laws of the Member States relating to the protection of employees in the event of the insolvency of their employer](#), OJ L 283, 28.10.1980. All of these have since been revised.

As the common market evolved from the Single European Act and the Maastricht Treaty, Jacques Delors, then President of the European Commission, talked of balancing economic integration with social protections. Addressing the European Parliament, he insisted:

"One thing is certain: the Commission's proposals on the large market will be matched by careful consideration of the social consequences."

He declared that the "creation of a social dimension is one of the five priorities of the Single Act and the key to the success of the large market," and that:

"Social cohesion ... is a mission enshrined in the Treaties involving harmonization geared to further improvement — rather than dispersion — in working conditions, employment, training and arrangements for giving workers a say."²²

To this end, Delors proposed the Community Charter of the Fundamental Social Rights of Workers, which was endorsed by 11 of the 12 member states—Britain being the lone dissenter. Building on this, there was an effort to incorporate a Social Chapter into the Maastricht Treaty (1992). However, due to Britain's opposition, it was added as a protocol, enabling Britain to be exempted from its application. When the British Labour Party won the 1997 general election, Britain abandoned this opposition. This allowed aspects of the Social Protocol to be formally integrated into the European treaties through the Amsterdam Treaty (1997), and into the social rights included in the Charter of Fundamental Rights, proclaimed in Nice in 2000 and granted legal force by the Lisbon Treaty (2009).²³

The Limits of Social Europe

Despite the political attention given to the Social Chapter and the Charter of Fundamental Rights, the legislative output remained underwhelming. While the quarter-century following Maastricht saw significant economic integration, major social policy achievements were scarce. One of the few landmark measures was the 1993 Working Time Directive,²⁴ which set maximum working hours and guaranteed minimum rest periods for workers.²⁵

Rather than expanding protections for workers, European institutions have in recent decades actively undermined existing safeguards. Key examples include the Laval (2007) and Viking (2008) rulings, which limited trade unions' ability to take industrial action against companies employing lower-wage workers from other member states, and the policy agenda of the Barroso Commissions (2004-2014), which framed social and employment policies as obstacles to growth and innovation, seeking to weaken collective labour relations.

During this period, the EU pursued a fiscal consolidation and austerity agenda, particularly in response to the Eurozone crisis. For instance, the 2011 Euro Plus Pact encouraged structural reforms in member states, including the abolition of wage indexation mechanisms, decentralization of

22 European Commission & Delors, J. (1988). *Programme of the Commission for 1988*. Publications Office of the European Union.

23 Dinan, Desmond. *Ever Closer Union: An Introduction to European Integration*, pp. 423-427

24 [Directive 93/104/EC of 23 November 1993 concerning certain aspects of the organization of working time](#), OJ L 307, 13.12.1993.

25 The Working Time Directive was one of several adopted under the Single European Act's insertion of a health and safety article into the Treaty of Rome. Others include the [Fixed-Term and Temporary Work Directive](#) (1991), the [Young Workers Directive](#) (1994), and the [Pregnant Workers Directive](#) (1992). Additional significant Social Europe measures from the past 40 years include the [Written Statement Directive](#) (1991), the [European Works Councils Directive](#) (1994), the [Posted Workers Directive](#) (1996), the [Agency Workers Directive](#) (2008), and the three 2000–2004 equality directives on [racial and ethnic origin, employment](#), and [gender equality in access to goods and services](#).

collective bargaining, and wage moderation in the public sector.²⁶ For countries that were part of a bailout programme, the Troika (European Commission, IMF, and ECB) imposed austerity measures as conditions for financial assistance, such as cuts to pensions, minimum wages, and public sector wages, as well as decentralization of collective bargaining.²⁷

The policy agenda of this period was very clearly displayed in the European Commission's 2012 report on Labour Market Developments, which outlined a set of so-called "employment-friendly reforms." These included reducing the progressivity of income taxation, decreasing unemployment and social benefits, weakening employment protection laws, lowering the minimum wage, reducing the collective bargaining power of trade unions, and increasing working hours while promoting part-time contracts.²⁸

Social Europe: Myth or Phoenix?

In response to these developments, some have argued that "Social Europe is a Myth". In 2018, political scientist Martin Höpner suggests that social democrats and trade unions initially supported economic integration in the hope that it would lead to a spillover effect into social policy. However, he argues:

*"There are no signs that a Social Europe is truly emerging... it is a myth to suggest, as one speech after the other does, that 'more Europe' will bring us closer to a Social Europe."*²⁹

However, the growing recognition of economic inequality, the fallout from the financial crisis, and the rise of populist movements have reopened discussions on the need for stronger social policies at the European level. Considering how bleak the prospects seemed just a few years ago, the resurgence of the Social Europe agenda over the past decade has been remarkable.

From Crisis to Revival: The Reemergence of Social Europe

The policy agenda of the Barroso Commissions (2004-2014) was, by almost any measure, a failure. Not only did these policies fail to prevent the Eurozone crisis, but they in fact exacerbated it, worsening social hardship across Europe. As Schulten and Müller highlight, the Barroso-era policies had three major failings: socially, they contributed to rising in-work poverty, increased precarity, and growing social inequality across the EU; economically, they weakened domestic growth potential and increased the dependence of many economies on exports rather than internal demand; and politically, they "promoted a more Euro-sceptic attitude among European citizens and undermined the acceptance and legitimacy of the political systems more generally both at national and EU level, which eventually contributed to the electoral successes of right-wing populist parties."³⁰

26 Keune, Maarten, and Philippe Pochet. 2023. ["The Revival of Social Europe: Is This Time Different?"](#) *Transfer: European Review of Labour and Research* 29 (2): pp. 174-175.

27 For a discussion of these developments in Ireland see: Michael Doherty, "New Morning: Irish Labour Law Post-Austerity," *Dublin University Law Journal* 39 (2016): 104-125.

28 European Commission. [Labour Market Developments in Europe, 2012](#). Brussels: European Commission, 2012, pp. 103-104.

29 Höpner, Martin. ["Social Europe Is a Myth."](#) *IPS Journal*, October 19, 2018.

30 Schulten, Thorsten, and Torsten Müller. ["A Paradigm Shift Towards Social Europe? The Proposed Directive on Adequate Minimum Wages in the European Union."](#) *International Labour and Employment Relations Journal* 1, no. 1 (2021): p.5.

The Shift in Political Discourse

In response to these failures, a notable shift in European political discourse began to emerge, with increasing recognition of "the importance of functioning labour and social systems for economic development and political stability."³¹ The Juncker Commission (2014-2019), which followed Barroso, made significant rhetorical commitments to this effect.

For example, in an October 2014 speech³² to the European Parliament, Jean-Claude Juncker declared:

*"I want Europe to have a social 'Triple A' because the social 'Triple A' is just as important as the economic and financial 'Triple A'."*³³

Juncker's most significant initiative in this area was the adoption of the European Pillar of Social Rights (EPSR) at the Gothenburg Summit in November 2017. The EPSR outlined 20 principles across three key areas: equal opportunities and access to the labour market; fair working conditions; and social protection and inclusion.³⁴

However, despite its ambitious name, the EPSR did not establish any enforceable rights; instead, it only provided non-binding political principles.³⁵ As a result, Juncker's contributions to Social Europe, while high-minded in rhetoric, fell short in terms of concrete legislative or structural change, a continuation of the pattern seen in previous decades.

The Unexpected Momentum of Social Europe

To the surprise of many, Ursula von der Leyen embraced and expanded upon the EPSR upon taking office as Commission President in 2019.³⁶ Rather than allowing the EPSR to remain a symbolic gesture, she moved swiftly to translate its principles into tangible policy.

This agenda was formalised in the European Pillar of Social Rights Action Plan,³⁷ which was presented in March 2021, ahead of the Porto Social Summit in May of that year.

Claire Kilpatrick, Professor of International European and Social Law at the European University Institute, Florence, has argued that the legislative push following the EPSR marks such a dramatic shift that it "beckons such a significant and broad-based burgeoning of Social Europe that it can be characterized as the Roaring 20s for Social Europe."³⁸ (Some of these pieces of legislation are listed in Appendix 1.)

³¹ Ibid.

³² Juncker, Jean-Claude. "[Political Guidelines – Juncker Commission](#)." Accessed March 2025.

³³ My translation of "Moi, je voudrais que l'Europe ait le «Triple A» social: le «Triple A» social est aussi important que le «Triple A» économique et financier."

³⁴ European Commission. "[European Pillar of Social Rights \(EPSR\)](#)."

³⁵ Schulten, Thorsten, and Torsten Müller. "[A Paradigm Shift Towards Social Europe?](#)"

³⁶ Kilpatrick, Claire. "The Roaring 20s for Social Europe: The European Pillar of Social Rights and Burgeoning EU Legislation." *Transfer: European Review of Labour and Research* 29, no. 2 (2023): 123-140.

³⁷ European Commission. "[European Pillar of Social Rights \(EPSR\)](#)."

³⁸ Kilpatrick, Claire. "The Roaring 20s for Social Europe: The European Pillar of Social Rights and Burgeoning EU Legislation."

A Legislative Turning Point? The AMWD

Among the many legislative proposals stemming from the EPSR, Kilpatrick singles out the Adequate Minimum Wage Directive (AMWD) for extensive discussion. She describes the 2020 proposal for this directive as the “biggest surprise for close observers of the legal dimensions of Social Europe”, noting that its provisions are “light years away from the pre-Pillar EU.” She emphasises that “national collective bargaining and trade unions have never been supported in this way by EU law.”³⁹

Similarly, Keune and Pochet have examined what they call “The Revival of Social Europe,” identifying three key dimensions of this shift: new forms of financing for Social Europe, largely in response to COVID-19 and climate change; a focus on addressing the most precarious sectors of the labour market; and a more integrated industrial relations system, in which the AMWD is “paramount”.⁴⁰

³⁹ Ibid.

⁴⁰ Keune, Maarten, and Philippe Pochet. “[The Revival of Social Europe: Is This Time Different?](#)” *Transfer: European Review of Labour and Research* 29, no. 4 (2023): 407-422.

Part II:

The Adequate Minimum Wage Directive (AMWD)

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The Road to the Adequate Minimum Wage Directive (AMWD)

The debate over a European minimum wage policy has a long history. As early as the 1989 Community Charter of the Fundamental Social Rights of Workers, the EU recognised the importance of fair wages, stating:

*"Workers shall be assured of an equitable wage, i.e., a wage sufficient to enable them to have a decent standard of living."*⁴¹

Building on this, the European Commission's 1993 'Opinion on an Equitable Wage' urged Member States to "take appropriate measures to ensure that the right to an equitable wage is protected", including through legislation, negotiated minimum wages, and strengthened collective bargaining. However, in practice, these recommendations had little impact on wage-setting, either at the European level or within individual Member States.⁴²

Adequate Wages as part of Fair Working Conditions

The EU Charter of Fundamental Rights does not explicitly mention adequate wages but instead guarantees "fair and just working conditions" (Article 31).⁴³ Over time, this phrase has been interpreted to include fair wages.⁴⁴ The European Pillar of Social Rights (EPSR) made this interpretation explicit by formally recognizing the right to fair wages. Principle 6 of the EPSR states:

*"Adequate minimum wages shall be ensured, in a way that provides for the satisfaction of the needs of the worker and his/her family in the light of national economic and social conditions."*⁴⁵

This shift in rhetoric set the stage for legislative action.

Von der Leyen's Push for a Minimum Wage Directive

When Ursula von der Leyen took office as President of the European Commission, she prioritised the establishment of fair minimum wages across the EU, stating:

*"Our Commission will put forward a framework to ensure that every worker in our Union has a fair minimum wage."*⁴⁶

To achieve this, the Commission launched two rounds of consultations with trade unions and

41 1989 Community Charter of the Fundamental Social Rights of Workers, adopted on 9 December 1989.

42 Schulten, Thorsten, and Torsten Müller. "A Paradigm Shift Towards Social Europe?" p. 6.

43 European Union, [Charter of Fundamental Rights of the European Union](#), Official Journal of the European Union C 326/391 (October 26, 2012).

44 Zimmer, Reingard. "Living Wages in International and European Law." *Transfer: European Review of Labour and Research* 25, no. 3 (2019): 285-299.

45 European Commission. "[European Pillar of Social Rights \(EPSR\)](#)."

46 von der Leyen, Ursula. "[Speech by President-elect Ursula von der Leyen in the European Parliament Plenary on the occasion of the presentation of her College of Commissioners and their programme](#)." European Commission. November 27, 2019.

employer organizations in January and June 2020. Following these discussions, the Commission formally presented a legislative proposal for an EU Directive on Adequate Minimum Wages in October 2020.

Over the next two years, the proposal underwent detailed scrutiny and revisions by the European Parliament and the Council. A breakthrough came under the French Presidency of the Council, which secured approval for a final text with the European Parliament in June 2022.⁴⁷ This was adopted by the European Parliament in September 2022 and by the Council in October 2022.

A Stronger Directive Through Parliamentary Engagement

Unlike many legislative proposals that are weakened through political compromises, this directive emerged stronger thanks to active engagement from the European Parliament. As Claire Kilpatrick observes:

"The progress of the proposed directive through the legislative process is not the traditional narrative of an originally strong proposal getting weakened through political horse-trading to emerge a shadow of its former self."⁴⁸

Instead, the European Parliament strengthened key provisions, particularly regarding commitments to minimum wages, trade union representation, collective wage bargaining, and stronger protections for minimum wages set through collective agreements.⁴⁹

The role of the European Parliament—the only directly elected EU institution—was crucial in shaping the final legislation.

As Luca Ratti, Associate Professor of European and Comparative Labour at the University of Luxembourg, notes the European Parliament had been advocating for EU-wide minimum wage protections even before the Commission's proposal.⁵⁰ In October 2019, Parliament explicitly called on the Commission to propose legislation to ensure that "every worker in the Union has a fair minimum wage."⁵¹ And support for European minimum wage legislation was repeated in subsequent Parliament resolutions.⁵²

This long-standing commitment explains why Parliament took an active and engaged approach in shaping the directive, with key amendments including increasing the collective bargaining coverage threshold from 70% to 80% and strengthening the rights and protections of trade unions and their members.

The passage of the Adequate Minimum Wage Directive represents a significant step forward for Social Europe. Unlike past initiatives that remained symbolic, this directive has introduced binding

47 Council of the European Union. "[Minimum Wages: Council and European Parliament Reach Provisional Agreement on New EU Law](#)," June 2022.

48 Kilpatrick, Claire. "The Roaring 20s for Social Europe: The European Pillar of Social Rights and Burgeoning EU Legislation."

49 Ibid

50 Ratti, Luca. "[The Sword and the Shield: The Directive on Adequate Minimum Wages in the EU](#)," *Industrial Law Journal* (2023), p.484.

51 [European Parliament resolution on employment and social policies of the euro area](#), October 2019.

52 European Parliament: [Resolution on the Employment and Social Policies of the Euro Area 2020](#), October 2020; [Resolution on a strong social Europe for just transitions](#), December 2020; [Resolution on reducing inequalities with a special focus on in-work poverty](#), February 2021.

commitments on collective bargaining and a framework for ensuring adequate minimum wages. It marks a turning point in the EU's approach to social and labour policy.

The Aims of the Adequate Minimum Wage Directive (AMWD)

The AMWD has been described as having one primary goal supported by two mechanisms.⁵³ The goal is to improve living and working conditions while the two mechanisms are: (a) ensuring the adequacy of minimum wages, and (b) promoting collective bargaining coverage.⁵⁴

Improving living and working conditions

The primary aim of the AMWD is to improve living and working conditions. Article 1 of the directive states that its goal is to:

"improve living and working conditions in the Union" (Art. 1(1))

Further elaborating, Article 5 explains how the directive contributes to this goal by striving to:

"achieve a decent standard of living, reducing in-work poverty, as well as promoting social cohesion and upward social convergence, and reducing the gender pay gap" (Art. 5(1))

In its Preamble, the directive details the importance of minimum wages in ensuring decent living and working conditions. It explains:

"Minimum wages that provide for a decent standard of living and thus meet a threshold of decency can contribute to the reduction of poverty at national level and to sustaining domestic demand and purchasing power, strengthen incentives to work, reduce wage inequalities, the gender pay gap and in-work poverty, and limit the fall in income during economic downturns." (Recital 8)

It also acknowledges that adequate minimum wages play a crucial role during economic downturns, particularly in protecting low-wage workers, stating:

"During economic downturns, the role of adequate minimum wages in protecting low-wage workers is particularly important" (Recital 9)

The importance of reducing in-work poverty is emphasised repeatedly in the directive (Recitals 5, 6, 8, 9, 13). Recital 9 further highlights the worsening situation of in-work poverty in the EU:

"In-work poverty in the Union has increased over the past decade, and more workers are experiencing poverty."

The Impact Assessment accompanying the 2020 proposal stresses that low wages have failed to keep pace with other wages in many EU Member States, exacerbating issues like "in-work poverty, wage inequality, and the capacity of low-wage earners to cope with economic distress."⁵⁵

53 Luca Ratti refers to two pillars and a transversal aim. See: Ratti, Luca. "[The Sword and the Shield: The Directive on Adequate Minimum Wages in the EU](#)."

54 Ibid.

55 European Commission. [Impact Assessment Accompanying the Document Proposal for a Directive of the European Parliament and of the Council on Adequate Minimum Wages in the European Union](#). Brussels: European Commission, 2020., p.1

Minimum Wages and Collective Bargaining

Today, all EU Member States have established minimum wages, though in various forms. In five Member States, minimum wages are determined through collective agreements, with these agreements covering a large proportion of workers in those countries. In 22 other Member States, statutory minimum wages are set by the government, with additional wage regulations often included in collective agreements that set rates above the national minimum wage.⁵⁶

The AMWD recognises the dual role of both collective agreements and statutory minimum wages in addressing issues of low pay and in-work poverty and thereby improving living and working conditions.⁵⁷ When collective agreements are successfully ensuring adequate minimum wages, the directive does not aim to interfere. As Article 1(3) states:

"The Directive shall be without prejudice to... the choice of Member States to set statutory minimum wages, to promote access to minimum wage protection provided for in collective agreements, or both."

What the directive seeks to ensure is that in every Member State, collective bargaining is promoted, and, where statutory minimum wages are in place, frameworks exist to ensure they are adequate. Importantly, the directive does not set or dictate the level or rate of minimum wages but only requires that frameworks are in place to guarantee their adequacy.

Challenges to Minimum Wages Adequacy

The Impact Assessment that accompanied the 2020 proposal revealed that minimum wages across the EU were insufficient in many cases, and collective bargaining coverage was too low in several Member States. The 2020 Impact Assessment, demonstrated that in 2019, very few Member States had minimum wages equal to 60% of the median wage or 50% of the average wage, two widely accepted indicators of minimum wage adequacy.⁵⁸

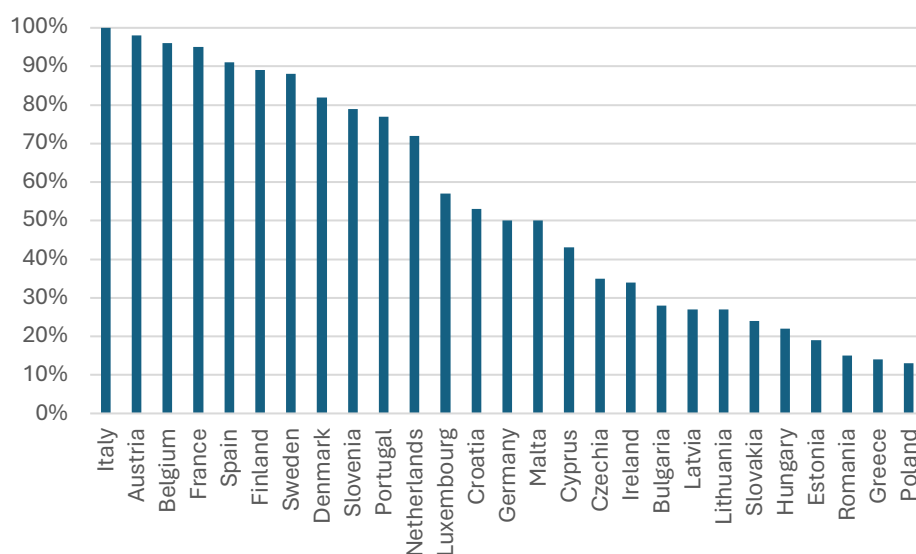
While some countries have high collective bargaining coverage, as illustrated in Graph 2, in many member states it is very low. Further, many Member States have experienced a decline in coverage in recent years.

⁵⁶ Eurofound. *Minimum Wages in 2024: Annual Review*. Luxembourg: Publications Office of the European Union, 2024.

⁵⁷ See Recital 22 as quoted on p.26 below.

⁵⁸ European Commission. [Impact Assessment Accompanying the Document Proposal for a Directive of the European Parliament and of the Council on Adequate Minimum Wages in the European Union](#), p.4

Figure 1. Collective Bargaining Coverage



Source: European Trade Union Confederation (ETUC). 2024. Wage-Up: Minimum Wage and Collective Bargaining Systems in Europe. <https://wage-up.etuc.org/>.

The Impact Assessment also identified that in many Member States, not all workers are covered by either statutory minimum wages or wages set through collective bargaining. In the case of statutory minimum wages, this is often due to exemptions⁵⁹ or variations⁶⁰ for specific groups of workers, or non-compliance with minimum wage laws. In countries without a statutory minimum wage, the issue arises because not all workers are covered by collective bargaining agreements.

For example, in countries with minimum wages set through collective agreements, the proportion of workers not covered in 2019 ranged from about 2% in Austria to 55% in Cyprus.⁶¹ (Cyprus has since implemented a statutory minimum wage.)⁶²

The Impact Assessment also highlighted that certain groups are disproportionately affected by low wages. As it notes:

"Women, young and low-skilled workers, single parents, as well as workers with non-standard contracts are more likely to be affected by the problem than other groups."

The Impact Assessment identifies five internal drivers contributing to inadequate minimum wages:⁶³

1. The negative trend in collective bargaining coverage
2. The lack of clarity in frameworks for setting statutory minimum wages
3. Insufficient involvement of social partners in minimum wage setting
4. Exemptions and variations to the minimum wage
5. Imperfect compliance with minimum wage laws

⁵⁹ In Ireland, statutory apprentices, people working for close relatives and "any non-commercial activity or work engaged in by prisoners". See the [National Minimum Wage Act 2000 \(as amended\)](#). Dublin: Law Reform Commission.

⁶⁰ In Ireland, the national minimum wage "may include an allowance in respect of board and lodgings" and there are lower minimum wage rates for those aged under 20.

⁶¹ European Commission. [Impact Assessment Accompanying the Document Proposal for a Directive of the European Parliament and of the Council on Adequate Minimum Wages in the European Union](#). p.7

⁶² Eurofound. *Minimum Wages in 2024: Annual Review*. Luxembourg: Publications Office of the European Union, 2024.

⁶³ European Commission. [Impact Assessment Accompanying the Document Proposal for a Directive of the European Parliament and of the Council on Adequate Minimum Wages in the European Union](#), pp.9-18.

These problems have significant repercussions for workers, as they result in a situation where:

*"Increasingly, work does not always protect against poverty."*⁶⁴

Additionally, issues with inadequate minimum wages may contribute to the gender pay gap and to labour market segmentation.

For employers and national economies, the consequences of low wages are equally troubling. Inadequate minimum wages can discourage employment, reduce the national labour supply, and encourage migration as workers seek better opportunities elsewhere. Additionally, an insufficiently clear system for setting minimum wages can result in unpredictable fluctuations in wage levels, which can be particularly detrimental to employers, especially small and medium-sized enterprises (SMEs).⁶⁵

The European Commission explains in contrast to these negative outcomes, when set at appropriate levels, minimum wages contribute to social fairness, support domestic demand, and strengthen work incentives. By ensuring adequate minimum wages, the AMWD aims to foster social cohesion, reduce in-work poverty, combat social exclusion, and narrow wage inequality. Additionally, it works to narrow the gender pay gap and create fairer, more equal, and competitive labour markets across the EU. The directive seeks to implement the right to fair wages contained in the Pillar of Social Rights, which all Member States have endorsed, strengthening the EU's commitment to social justice and economic stability.⁶⁶

Two Mechanisms of the AMWD: Adequacy

One of the two core mechanisms of the Adequate Minimum Wage Directive (AMWD) is the concept of adequate minimum wages. This is addressed in Article 5 of the directive, titled "Procedure for setting adequate statutory minimum wages." Notably, the directive does not specify the exact level or rate of minimum wages. Instead, it outlines a procedural framework that ensures Member States with statutory minimum wages implement adequate wage standards.

Central to this framework is the requirement that Member States set specific criteria to assess the adequacy of their statutory minimum wages. As Article 5(1) states:

"Member States with statutory minimum wages shall establish the necessary procedures for the setting and updating of statutory minimum wages. Such setting and updating shall be guided by criteria set to contribute to their adequacy."

While these criteria must be clearly defined, Member States have the flexibility to determine the specific factors they wish to use. However, at a minimum, the criteria must include the purchasing power of statutory minimum wages, factoring in the cost of living, the general level of wages and their distribution, the growth rate of wages, and long-term national productivity levels and trends (Article 5(2)).

⁶⁴ Ibid, p.18.

⁶⁵ Ibid, p.19.

⁶⁶ European Commission. "[Questions and Answers on Adequate Minimum Wages in the EU](#)." Accessed March 2025.

In addition to setting criteria, Article 5(4) stipulates that Member States must use "indicative reference values" to guide their assessments of minimum wage adequacy. While Member States are free to select their own reference values, the directive suggests two commonly used international benchmarks:

"Member States may use indicative reference values commonly used at international level such as 60% of the gross median wage and 50% of the gross average wage."

The directive also outlines several other requirements for how Member States should set their statutory minimum wages:

- *Regular updates*: Member States must update their minimum wages every 2-4 years (Article 5(5)).
- *Automatic indexation*: Member States may implement automatic indexation methods, as long as these do not result in a decrease of the minimum wage (Article 5(3)).
- *Consultative bodies*: Each Member State must establish or designate a consultative body to advise on minimum wage issues (Article 5(6)).
- *Non-discrimination and proportionality*: Any variations or deductions to the minimum wage must respect the principles of non-discrimination and proportionality, including the pursuit of legitimate aims (Article 6(1)).
- *Involvement of social partners*: Member States are required to involve social partners in the setting and updating of minimum wages (Article 7).
- *Enforcement of minimum wage laws*: Member States must ensure the enforcement of minimum wage laws through field inspections and the pursuit of non-compliant employers (Article 8).

Two Mechanisms of the AMWD: Promoting Collective Bargaining

The second core mechanism of the Adequate Minimum Wage Directive (AMWD) is the promotion of collective bargaining, which is addressed in Article 4 of the directive, titled "Promotion of collective bargaining on wage-setting." As Ratti notes, the importance of this article is "by no means secondary to that of Article 5."⁶⁷

The rationale behind promoting collective bargaining is clearly articulated in the preamble of the directive, particularly in Recital 22, which deserves to be quoted in full:

"Well-functioning collective bargaining on wage-setting is an important means by which to ensure that workers are protected by adequate minimum wages that therefore provide for a decent standard of living. In the Member States with statutory minimum wages, collective bargaining supports general wage developments and therefore contributes to improving the adequacy of minimum wages as well as the living and working conditions of workers. In the Member States where minimum wage protection is provided for exclusively by collective bargaining, their level as well as the share of protected workers are directly determined by the functioning of the collective bargaining system and the collective bargaining coverage. Strong and well-functioning collective bargaining together with a high coverage of sectorial or cross-industry collective agreements strengthen the adequacy and the coverage of minimum wages."

⁶⁷ Ratti, Luca. "The Sword and the Shield", p.488.

However, Recital 16 acknowledges the decline in collective bargaining coverage in recent decades and explains the directive's focus on strengthening and promoting collective bargaining, which is the aim of Article 4. It states:

"While strong collective bargaining, in particular at sector or cross-industry level, contributes to ensuring adequate minimum wage protection, traditional collective bargaining structures have been eroding during recent decades, due, inter alia, to structural shifts in the economy towards less unionised sectors and to the decline in trade union membership, in particular as a consequence of union-busting practices and the increase of precarious and non-standard forms of work. In addition, sectoral and cross-industry level collective bargaining came under pressure in some Member States in the aftermath of the 2008 financial crisis. However, sectoral and cross-industry level collective bargaining is an essential factor for achieving adequate minimum wage protection and therefore needs to be promoted and strengthened."

The Commission's initial draft of the directive included two key provisions in Article 4(1) to promote collective bargaining across all Member States. These provisions required Member States to:

- a) "promote the building and strengthening of the capacity of the social partners to engage in collective bargaining on wage setting at sector or cross-industry level;
- b) "encourage constructive, meaningful and informed negotiations on wages among social partners"⁶⁸

However, during the legislative process, the European Parliament proposed significant amendments to strengthen this article. The requirement to "encourage constructive, meaningful and informed negotiations" was expanded to also include the provision that "both parties have access to appropriate information in order to carry out their functions in respect of collective bargaining on wage-setting."

More significantly, two additional provisions were added to protect the right to collective bargaining and safeguard workers and trade union representatives from retaliation. These provisions transpose Articles 1 and 2(1) of the ILO Convention No. 98 (1949) on the Right to Organize and Collective Bargaining, making them legally binding for Member States.⁶⁹ These provisions require Member States to:

- c) *"take measures, as appropriate, to protect the exercise of the right to collective bargaining on wage-setting and to protect workers and trade union representatives from acts that discriminate against them in respect of their employment on the grounds that they participate or wish to participate in collective bargaining on wage-setting"*
- d) *"for the purpose of promoting collective bargaining on wage-setting, take measures, as appropriate, to protect trade unions and employers' organisations participating or wishing to participate in collective bargaining against any acts of interference by each other or each other's agents or members in their establishment, functioning or administration."*

Additionally, Recital 28 suggests that Member States should adopt measures to promote collective bargaining, including, among other things, "easing the access of trade union representatives to workers."

⁶⁸ European Commission. [Proposal for a Directive of the European Parliament and of the Council on Adequate Minimum Wages in the European Union](#). COM(2020) 682 final. October 28, 2020.

⁶⁹ Ratti, Luca. *"The Sword and the Shield"*, p.489. The European Commission [Final Report of the Expert Group on the Transposition of the Directive](#) confirms that "Most provisions in Article 4(1) was inspired by existing ILO Conventions."

Provisions for Member States with Low Bargaining Coverage

While the above four provisions apply to all Member States, Article 4(2) introduces a significant measure specifically for those Member States where collective bargaining coverage is less than 80% (in the initial proposal, the threshold was set at 70%, but the European Parliament strengthened this provision). These Member States are obligated to:

1. *"Provide for a framework of enabling conditions for collective bargaining, either by law after consulting the social partners or by agreement with them."*
2. *"Establish an action plan to promote collective bargaining."*

In the case of Ireland, which has a collective bargaining coverage rate of around 34%, this provision is particularly significant. The action plan, which must be developed after consulting the social partners, by agreement with them, or following a joint request from them based on an agreement between them, shall include a clear timeline and concrete measures aimed at progressively increasing collective bargaining coverage. The Member State is required to regularly review and update the action plan, with the provision that it must be reviewed at least every five years. Moreover, any updates to the action plan must also be made after consultation with the social partners. Additionally, the action plan and any updates must be made public and notified to the Commission.

The directive empowers the European Commission to monitor the implementation of these obligations. If a Member State fails to fulfil the requirements of Article 4, the Commission can initiate infringement proceedings under Articles 258 and 260 of the TFEU. These proceedings could result in the imposition of penalties by the Court of Justice of the European Union (CJEU).⁷⁰

⁷⁰ Ratti, Luca. ["The Sword and the Shield."](#) p.489.

Part III: The Impact of the AMWD So Far

Part III: The Impact of the AMWD So Far

The Adequate Minimum Wages Directive (AMWD) came into force on 19 October 2022, with a transposition deadline set for 15 November 2024. While many countries missed this deadline,⁷¹ most have at least initiated the transposition process. Even in cases where transposition is incomplete, the AMWD is already having a significant impact.

What the directive requires

To reiterate what has been stated above the primary objective of the AMWD is to improve living and working conditions through two key mechanisms: ensuring the adequacy of minimum wages and promoting collective bargaining.

With regard to adequacy, while the directive does not mandate a specific minimum wage level, it establishes a procedural framework to ensure that Member States with statutory minimum wages uphold adequate wage standards.⁷²

With regard to promoting collective bargaining, the directive places obligations on Member States to promote collective bargaining in wage-setting.⁷³

Additionally, the directive imposes a legal requirement on Member States to develop an action plan if collective bargaining coverage falls below 80%, the European Commission has clarified in an expert report that drafting such an action plan is part of the directive's implementation rather than its transposition. Therefore, the deadline for the action plan is the end of 2025.⁷⁴

The directive's requirements are significant and are already shaping labour policies in Ireland and across the EU.

What has been the impact so far across the EU?

Minimum Wages

Before discussing the impact of the directive, it is important to note the wide variation in minimum wage levels across the 22 EU member states with statutory minimum wages. This can be seen in both euro terms and in Purchasing Power Standard (PPS) terms in Figure 2. The large variation in minimum wages in euro terms partly reflects differing price levels across countries. When adjusted for price differences using the PPS, minimum wages become more comparable.

Once adjusted, a clear pattern emerges: minimum wage levels closely correlate with economic

71 European Trade Union Confederation (ETUC). "[Most Countries Could Miss Minimum Wage Directive Deadline](#)." Press release, January 18, 2023.

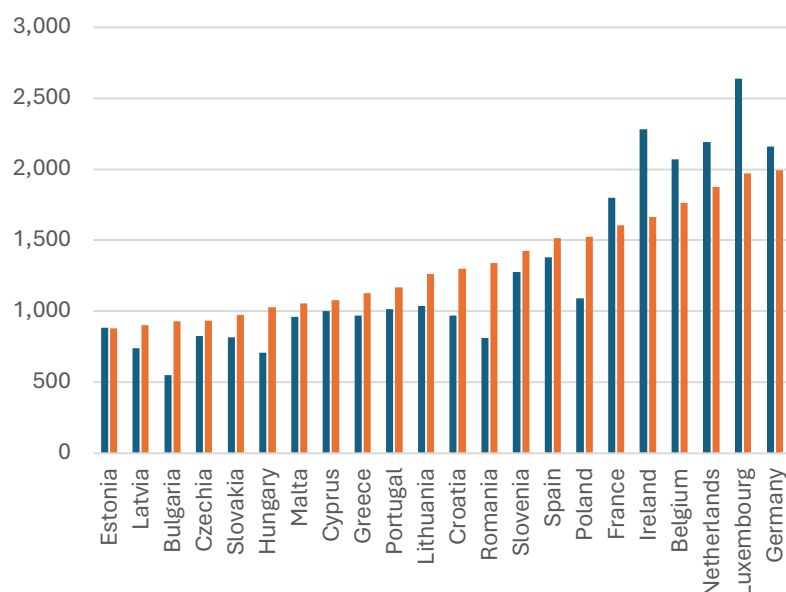
72 This framework includes: clear and stable criteria for setting minimum wages including the use of indicative reference values as benchmarks for adequacy, with 60% of the median wage and 50% of the mean wage as suggested values; regular and timely updates of minimum wages; the establishment of consultative bodies to advise relevant authorities; minimization of wage variations and deductions; effective involvement of social partners in wage-setting processes; and, strengthening enforcement of minimum wage laws.

73 These include strengthening the capacity of social partners; encouraging constructive, meaningful, and informed negotiations; protecting workers and trade union representatives from discrimination; and safeguarding trade unions and employer organizations from external interference.

74 Government of Ireland. [Final Report of the High-Level Working Group on Collective Bargaining](#). 2024.

development. Poorer EU member states tend to have lower minimum wages, while richer states have higher ones. In fact, when expressed as a percentage of mean wages, the dispersion of minimum wages decreases further. For member states with statutory minimum wages and available data, all in 2023 had minimum wages either between 40% and 50% of the mean wage or very close to that range.⁷⁵

Figure 2. Monthly Statutory Minimum Wages in the EU, 2025



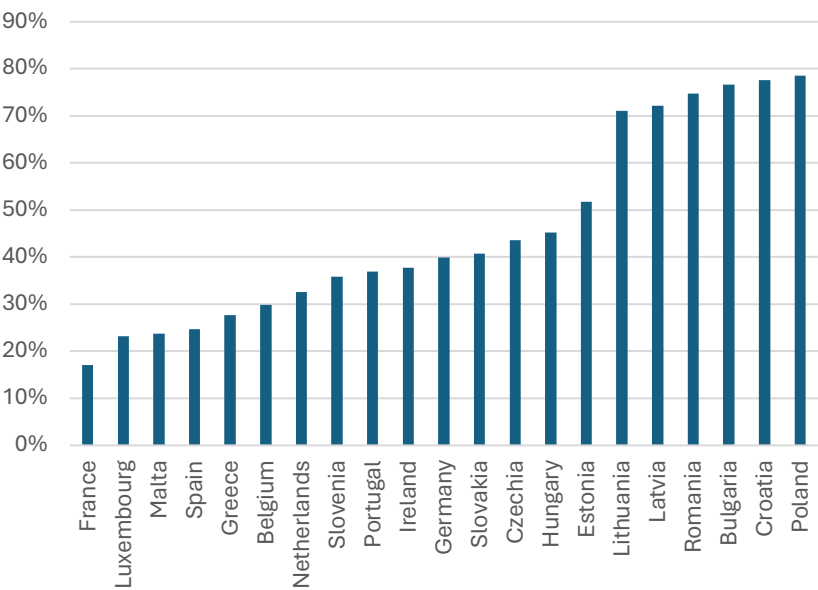
Source: Eurostat, "[Monthly Minimum Wage Rates](#)"

Since the publication of the Proposal for an EU Directive on Adequate Minimum Wages in 2020, minimum wages have increased significantly across all member states with statutory minimum wages. The largest increases have occurred in countries where wage levels were initially lower. As shown in Figure 3, six member states have seen minimum wages rise by more than 70% over the past five years—a rate nearly double that of Ireland.

Although high inflation in recent years has eroded some of these minimum wage gains, overall wage growth has still outpaced inflation, indicating a trend toward real wage increases.

⁷⁵ Eurostat, "[Monthly Minimum Wage as a Proportion of Average Monthly Earnings \(%\) - NACE Rev. 2 \(from 2008 onwards\)](#)."

Figure 3. Nominal Minimum Wage Growth between 2020 and 2025



Source: Author's calculation based on Eurostat, "Monthly Minimum Wage Rates"

The impact of the EU Directive can also be seen in terms of its impact on national minimum wage setting, with many countries starting to use the indicative rates of 50% of the mean wage or 60% of the median wage. The details of these various national level development is provided in Table 2.

Collective Bargaining

With regard to collective bargaining, as stated above, the deadline for the action plan is the end of 2025, and so far, less radical change is visible. Unlike the minimum wage—which can be adjusted through an act of legislation—increasing the proportion of workers covered by collectively bargained agreements is inevitably a more complex and slower process. This is especially true in member states where collective bargaining coverage is particularly low, as such cases may require significant reforms to their industrial relations architecture.

Figure 1 on p.24 above illustrates the wide variation in collective bargaining coverage rates across the EU, ranging from over 95% in Italy, Austria, Belgium, and France, to 15% or less in Romania, Greece, and Poland. Ireland is at the lower end of the distribution, with a coverage rate of 34%. Only eight member states meet or exceed the 80% threshold, meaning that 19 member states will need to develop an action plan.

Table 2. Impact of the Directive on national minimum wage setting

Bulgaria	Change of law on 1 February 2023 stipulating that from 2024 the statutory minimum wage will be set at 50% of the national average gross wage on 1 September each year. Calculation of the average wage is based on data for the last two quarters of the previous year and the first two quarters of the current year. The new minimum wage cannot be lower than that of the previous year.
Slovakia	In Slovakia, already in 2019, the minimum wage had been linked to 60% of the average wage, but this was reduced to 57% in 2020 in the context of the COVID-19 pandemic. This move was reversed in October 2024, when the parliament approved a bill setting the minimum wage at a rate of at least 60% of the average wage (of the previous two years), unless the social partners agreed on a higher rate. However, the government decision to increase the minimum wage from €750 to €816 from 1 January 2025 fell short of the 60% rate, and it is expected the next update in 2026 will accomplish that goal.
Croatia	The government decree determining the increase in 2024 referred explicitly to the double decency threshold of 60% of the national median wage and 50% of the national average wage.
Cyprus	On 1 January 2023, Cyprus introduced a new national statutory minimum wage, which at the time corresponded to 60% of the median gross wage.
Czechia	Minimum wage setters set a target for the nominal rate to reach 47% of the average wage by 2029
Estonia	In May 2023, trade unions, employers and government concluded a tripartite 'goodwill agreement' expressing the commitment to increase the statutory minimum wage to 50% of the national average wage by 2027.
Germany	The introduction of the double decency threshold encouraged the political debate to incorporate the reference value of 60% of the median wage in national legislation.
Greece	A proposal to introduce a formula-based adjustment mechanism for minimum wages from 2027 onwards is currently under discussion.
Hungary	Unions used the double decency threshold in discussions with the government and employers about minimum wage adjustments for 2024.
Ireland	The minimum wage for January 2025 was set in line with the target of reaching 60% of the median wage by 2026.
Latvia	There is a debate on adequacy criteria; while unions argue in favour of the double decency threshold, employers argue for 40% of the national average wage.
Malta	A four-year plan to increase the national minimum wage is in its second year of implementation, based on a tripartite agreement from 2023 and recommendations made by the country's Low Pay Commission.
Netherlands	The Dutch Trade Union Confederation started a political campaign for a statutory minimum wage of €16 with explicit reference to 60% of the national median wage.
Romania	The government is aiming for 50% of the average wage (the new nominal rate in January 2025 reaching 47%), as established in the new minimum wage legislation that followed tripartite consultation.
Spain	While the trade unions have long been calling to increase the minimum wage to 60% of the average wage as foreseen in the Council of Europe's European Social Charter, the current left-wing government has proposed including the target of 60% of the median wage as a lower limit in Spanish labour law.

Source: Müller, Torsten. *Dawn of a New Era?: The Impact of the European Directive on Adequate Minimum Wages in 2024*; Aumayr-Pintar, Christine, and Carlos Vacas-Soriano. *Substantial Rises in National Minimum Wages in 2025 Linked to EU Directive*.

The distribution shown in Figure 1 also offers insight into what might be necessary to achieve 80% coverage. As Thorsten Müller and Thorsten Schulten have pointed out:

"All countries with collective bargaining coverage of 80% or more have a comprehensive sectoral bargaining system. Decentralised bargaining systems in which negotiations take place primarily at company level have significantly lower collective bargaining coverage, as small and medium-sized companies in particular very rarely engage in collective bargaining. The strengthening of collective bargaining coverage envisaged in the Minimum Wage Directive is therefore aimed explicitly at introducing or buttressing sectoral collective bargaining."⁷⁶

Secondly, these states have strong state support for collective bargaining, including the frequent use of extension mechanisms that ensure sectoral collective agreements apply to all companies in the respective sector. In contrast, member states with collective bargaining coverage of 50% or less lack a comprehensive institutional framework and sufficient state support for sectoral bargaining. Müller and Schulten argues that:

"coverage of at least 80% can be achieved only through a system of sectoral collective bargaining with adequate support from the state."⁷⁷

For many countries with low levels of collective bargaining coverage—such as Ireland—this implies that significant changes to their industrial relations systems will be necessary if they aim to move towards the 80% target.

Some of the possible changes to promote collective bargaining coverage, as proposed by Müller and Schulten, are reproduced in Table 3.

⁷⁶ Müller, Torsten, and Thorsten Schulten. *The Road to 80% Collective Bargaining Coverage*. Brussels: European Trade Union Institute (ETUI), 2025.

⁷⁷ Ibid.

Table 3. Measures and instruments to promote (sectoral) collective bargaining

Strengthening the bargaining parties' capacity to act		Political or institutional support for sectoral collective bargaining
Trade unions	Employers' organisations	
Improved rights of access to companies (including digital access)	Supporting the establishment of employers' organisations at sectoral level	More effective extension of collective agreements
Measures against union busting and protection against discrimination against union representatives	Obligation for employers to engage in sectoral collective bargaining	Public contracts and state economic support only for companies that accept and apply collective agreements
Right to collective redress in case of violation of agreement	Establishing bipartite 'sectoral bargaining councils' as an incentive for employers to engage in negotiations or a chamber system with compulsory company membership	Promotion of multi-employer bargaining as a bridge towards sectoral bargaining
Improved possibilities that collective agreements will provide certain benefits exclusively to union members	Making the provision of tax benefits for the provision of fringe benefits conditional on being covered by a collective agreement	Ensure the validity of collective agreements in case of a company restructuring such as a spin-off or transfer of undertaking
financial incentives for union membership	Financial incentives for companies to become a member of a sectoral employers' organisation	Extending the scope of collective agreements to excluded groups of employees, such as solo self-employed and agency workers

Source: Müller, Torsten, and Thorsten Schulten. *The Road to 80% Collective Bargaining Coverage*.

What has been the impact so far in Ireland?

Minimum Wages

Across the EU, the Adequate Minimum Wages Directive has led to substantial changes in minimum wage policy, and Ireland is no exception. The national minimum wage has increased significantly—from €10.10 per hour in 2020 to €13.50 per hour in 2025—representing a 34% increase over five years. The Irish government has also committed to raising the minimum wage to 60% of the median wage by 2026. This target originated from a commitment in the June 2020 Programme for Government to “progress to a living wage over the lifetime of the Government,”⁷⁸ preceding the publication of the Proposal for a Directive on Adequate Minimum Wages in October 2020. Nevertheless, the fact that the government's target fully aligns with one of the suggested “indicative reference values” in the directive has proven convenient.

78 Government of Ireland. *Programme for Government: Our Shared Future*. June 2020.

To give effect to the directive, the government passed a Statutory Instrument (SI) ⁷⁹ introducing two major changes. Firstly, in describing the work of the Low Pay Commission—the consultative body that provides the government with recommendations on the national minimum wage—the SI adds an explicit reference to “consultation with and voluntary participation of the representatives of employers and employees.” Secondly, it amends the list of factors the Commission must consider in its recommendations, explicitly including all elements required by the directive, such as the 60% threshold. Beyond these steps, the government maintains that no further legislation is necessary to transpose the directive. However, this position has been contested by the Irish Congress of Trade Unions.⁸⁰

The directive has also influenced the Low Pay Commission's recommendations. Currently in Ireland, workers under 20 receive a lower minimum wage: 90% of the full rate for those aged 19, 80% for 18-year-olds, and 70% for those aged 17 and younger. In 2022, then-Tánaiste Leo Varadkar tasked the Commission with reviewing these youth rates. The Low Pay Commission ultimately recommended their abolition,⁸¹ citing Article 6 of the directive, which mandates that variations in minimum wage rates be non-discriminatory, proportionate, and pursue a legitimate aim:

“Where Member States allow for different rates of statutory minimum wage for specific groups of workers ... they shall ensure that those variations and deductions respect the principles of nondiscrimination and proportionality, the latter including the pursuit of a legitimate aim.”

Following extensive examination of this issue, the Low Pay Commission stated it was “...unable, firstly, to identify the specific ‘legitimate aim’ of sub-minimum youth rates based purely on age alone.” And it concluded that “...in the absence of an objective justification of the existing sub-minimum youth rates system, the Low Pay Commission recommends that sub-minimum wage rates ... should be abolished.”⁸²

Despite these recommendations being issued in March 2024, they have yet to be implemented. This delay raises questions about whether Ireland is currently in breach of the EU Directive on Adequate Minimum Wages.

Collective Bargaining

While the Irish government claims that the existing Low Pay Commission satisfies the requirements of Article 5 of the directive—which outlines a framework for setting statutory minimum wages—other provisions impose additional obligations. In particular, Article 4, which mandates the promotion of collective bargaining, places new responsibilities on member states – such as Ireland – with collective bargaining coverage below 80%. Under Article 4(2), this includes establishing “an action plan to promote collective bargaining.”⁸³ This action plan must be developed in meaningful consultation with social partners.

79 [European Union \(Adequate Minimum Wages\) Regulations 2024](#). Statutory Instrument No. 633 of 2024. Dublin: Government of Ireland, 2024.

80 Malone, Emmet. [“Government in Breach of Obligations on Transposition of EU Directive, ICTU Says.”](#) *Irish Times*, November 15, 2024.

81 Low Pay Commission. [Report on Sub-minimum Youth Rates](#). Dublin: Government of Ireland, 2024.

82 Low Pay Commission. [Report on Sub-minimum Youth Rates](#). Dublin: Government of Ireland, 2024. p.45

83 Article 4(2) of [Directive \(EU\) 2022/2041 of the European Parliament and of the Council of 19 October 2022 on adequate minimum wages in the European Union](#), OJ L 275, 25.10.2022, p. 33–47.

To date, no such action plan has been published, although the 2025 Programme for Government commits to releasing one before year-end.⁸⁴

Legal scholars have also noted a broader evolution in Ireland's legal and policy stance on collective bargaining, driven in part by EU developments. In a 2024 article, Michael Doherty explores the directive's potential impact, using Ireland as a case study:

*"Ireland is one of the countries with a relatively low collective bargaining coverage rate, where measures will be required to promote collective bargaining... the Irish journey in recent years seems to mirror that of the EU Institutions. From an emphasis on austerity measures ... allied with judicial decision-making which seemed to favour economic rights over social rights, to a "paradigm shift" of a (re)emphasis on social Europe, and on collective rights."*⁸⁵

A key focus of Doherty's article is this "paradigm shift" in Irish court decisions regarding collective bargaining. To illustrate the anti-collective bargaining stance of the early 2010s, he references the 2010 Troika Agreement, which required the government to commission an independent review of Registered Employment Agreements (REAs) and Joint Labour Committees (JLCs).⁸⁶

JLCs could propose Employment Regulation Orders (EROs) that, once confirmed by the Labour Court, set legally binding sectoral minimum wages and conditions. However, in 2011, the High Court found the legislation enabling EROs unconstitutional.⁸⁷ In 2013, the Supreme Court similarly struck down Part III of the Industrial Relations Act 1946, which underpinned the REA system, arguing that its effect appears "somewhat anomalous" today and gives rise to the "prospect of burdensome restraints on competition for prospective employers and intrusive paternalism for prospective employees".⁸⁸

In contrast, recent judgements reflect a more favourable view of collective bargaining.⁸⁹ Doherty points to the Supreme Court's judgment in the NECI case⁹⁰ and a 2024 ruling by Judge Hogan, who stated that the constitutional right to form trade unions likely implies at least "some—perhaps as yet undefined—zone of freedom for those unions to organise and campaign. The *effet utile* of this constitutional provision would otherwise be compromised."⁹¹

Doherty cautions against overstating this shift but argues these rulings reflect the broader "paradigm shift" in EU policy since the European Pillar of Social Rights (EPSR). He writes that "the direction of travel, if clearly signalled by the EU institutions, can have an impact on the national legal and policy environment."⁹²

This shift is also reflected in the work of the Labour Employer Economic Forum's High Level Working Group on Collective Bargaining, chaired by Doherty and established by then-Tánaiste Varadkar.

84 Government of Ireland. [Programme for Government 2025: Securing Ireland's Future](#). 2025.

85 Doherty, Michael. "[Make Me Good...Just Not Yet? The \(Potential\) Impact of the Adequate Minimum Wage Directive](#)," *Italian Labour Law e-Journal* 17, no. 1 (2024), p.212.

86 *Ibid.*, p.214

87 *Ibid.*, p.215

88 It should be noted that in response to these judgements, in 2015 new legislation was introduced re-instating the REAs and SEOs.

89 *Ibid.*, pp.217-218

90 *Naisiúnta Léictreach Contraitheoir Éireann Coideachta Faoi Theorainn Ráthaoichta (NECI) v The Labour Court, The Minister for Business, Enterprise and Innovation, Ireland and the Attorney General* [2021] IESC 36.

91 *H.A. O'Neil Ltd v Unite* [2024] IESC 8.

92 Doherty, Michael. "[Make Me Good...Just Not Yet? The \(Potential\) Impact of the Adequate Minimum Wage Directive](#)," p.218.

Though its final report was completed in October 2022,⁹³ before the directive came into force, Doherty notes it was "very much completed in the shadow of EU law."⁹⁴

The report recommended action in four key areas:

- Incentives to encourage participation in Joint Labour Committees
- Greater use of technical assessors before the Labour Court
- Measures to promote "good faith" engagement at the enterprise level
- Training and a code of practice for representatives engaging in collective bargaining⁹⁵

Unfortunately, as of yet, progress has been minimal. It's expected that the forthcoming action plan will incorporate some or all of these recommendations. However, it should be noted that the 2023 Expert Group report on the transposition of the directive notes that in member states—presumably including Ireland—where sectoral regulations are approved by the government based on JLC or Labour Court proposals, such regulation "is not a collective agreement." This implies that workers covered by these regulations may not be counted when calculating collective bargaining coverage, further complicating Ireland's compliance with Article 4.

"However, it should be noted that the 2023 Expert Group report on the transposition of the directive states that in member states—presumably referring to Ireland—where "sectoral regulations [are] approved by the government on the basis of a proposal from joint labour committees or a labour court", such regulation 'is not a collective agreement.' This implies that workers covered by these regulations may not be included when calculating collective bargaining coverage, further complicating Ireland's compliance with Article 4."⁹⁶

93 Government of Ireland, [Final Report of the High-Level Working Group on Collective Bargaining](#), 2024. .

94 Doherty, Michael. "[Make Me Good...Just Not Yet? The \(Potential\) Impact of the Adequate Minimum Wage Directive](#)," p.219.

95 Irish Congress of Trade Unions (ICTU), [ICTU General Election Manifesto 2024](#), Dublin: ICTU, 2024. .

96 European Commission, [Final Report of the Expert Group on the Directive on Adequate Minimum Wages](#), November 2023, p.18.

Part IV: The Denmark Case and Advocate General Emiliou's Opinion

Part IV: The Denmark Case and Advocate General Emiliou's Opinion

The Adequate Minimum Wages Directive (AMWD) came into force on 19 October 2022, with a transposition deadline set for 15 November 2024. However, in 2023, Denmark brought a case before the European Court of Justice (ECJ),⁹⁷ arguing that the European Parliament and the Council lacked the legal competence to adopt the directive and that it should be annulled in full. Denmark's central claim was that the EU Treaties did not grant the necessary legal basis for such a directive.⁹⁸ Denmark has been supported in their case by Sweden.⁹⁹

The ECJ operates differently from courts in Ireland in several respects. One key distinction is the role of the Advocate General (AG), a legal expert whose function is to assist the court by providing an impartial legal opinion on cases assigned to them. This opinion is delivered after hearings have concluded but before the judges deliberate and issue their final ruling. While not binding, the Advocate General's opinion is often influential in shaping the court's judgment.

On 14 January 2025, Advocate General Nicholas Emiliou issued his opinion in the case *Kingdom of Denmark v European Parliament and Council of the European Union*. His conclusion surprised many: he supported Denmark's argument and recommended the full annulment of the AMWD. The extent to which this will influence the ECJ's final judgment—expected in the coming months—remains to be seen.

The Legal Basis of the AMWD and Denmark's Argument

To understand AG Emiliou's position, it is essential first to examine Denmark's claim that the European Parliament and the Council lacked the competence to adopt the directive. This requires an analysis of the legal basis for the AMWD.

The directive cites Articles 153(1)(b) and 153(2)(b) of the Treaty on the Functioning of the European Union (TFEU) as its legal foundation.

Article 153 states:

1. "... the Union shall support and complement the activities of the Member States in the following fields: ...
 - (b) working conditions; ...
2. "To this end, the European Parliament and the Council: ...
 - (b) may adopt, in the fields referred to in paragraph 1(a) to (i), by means of directives, minimum requirements for gradual implementation, having regard to the conditions and technical rules obtaining in each of the Member States..."

⁹⁷ Court of Justice of the European Union, [Case C-19/23: Kingdom of Denmark v European Parliament and Council of the European Union](#) (Action brought 18 January 2023).

⁹⁸ Ibid.

⁹⁹ It is hard to understand what is motivating Sweden's strong opposition to the directive, as it has little to no impact on Swedish labour relations. See: Selberg, Niklas, and Emma Sjödin. [The Directive \(EU\) 2022/2041 on Adequate Minimum Wages in the European Union: Much Ado About Nothing in Sweden?](#) *European Labour Law Journal* 15, no. 2 (2024): 1-18. . Roland Erne hints at the possible motivation when he notes that "In 2019, BusinessEurope leaders expressed confidence that they would easily block any Commission proposal in this area, having persuaded Danish and Swedish union confederations of the directive's alleged illegality." See Erne, Roland, "[The EU Minimum Wage Directive: To Be or Not To Be?](#)" *TASC Blog*, February 26, 2025.

On the surface, this seems straightforward: the AMWD aims to "support and complement the activities of the Member States" in the area of "working conditions" and does so through a directive. However, a complication arises later in Article 153. Article 153(5) explicitly limits the provision's scope:

"The provisions of this Article shall not apply to pay, the right of association, the right to strike or the right to impose lock-outs."

This presents an apparent contradiction. Article 153(5) states that the article "shall not apply to pay", yet the AMWD, which deals with minimum wages, relies on Article 153 as its legal basis. The central question in the Denmark case is whether this exclusion of "pay" from Article 153 invalidates the AMWD.

Denmark and Sweden argue that, because of Article 153(5), the European Parliament and the Council lacked the authority to adopt the directive. However, the Council, the Commission, and the European Parliament—supported by seven member states (Belgium, Portugal, Luxembourg, Greece, France, Germany, and Spain)—counter that the directive is legally sound. Their argument rests on a crucial legal distinction: while Article 153(5) excludes "pay" from its scope, this exclusion should not be interpreted so broadly as to prohibit any legislative measure related to wages.

The Interpretation of "Working Conditions" and the Pay Exclusion

A key question is whether "working conditions" include matters related to pay. The answer, based on EU treaties, legislation, and case law, is unequivocally yes.

Article 45(2) of the TFEU explicitly refers to "remuneration and other conditions of work," treating pay as an aspect of working conditions. Similarly, Article 3(1)(f) of the 2008 *Temporary Agency Work Directive*¹⁰⁰ defines "basic working and employment conditions" as including:

- i. *the duration of working time, overtime, breaks, rest periods, night work, holidays and public holidays;*
- ii. *pay.*

Likewise, the *Posted Workers Directive*¹⁰¹ categorises "conditions of employment" as encompassing "remuneration."¹⁰² These examples establish a clear precedent: under EU law, pay is considered part of working conditions.

The issue, then, is how Article 153(5)'s exclusion of "pay" should be interpreted. If read expansively, it could prohibit any directive that touches on wages. However, in past ECJ rulings, the exclusion has been consistently interpreted *restrictively*. In an in-depth analysis of the AG Emiliou opinion, legal scholars Claire Kilpatrick and Marc Steiert explain:

"In several cases, the Court rejected the exclusion's application to pay issues arising under EU legislation covering working and employment conditions. The exclusion covers measures which 'amount to direct interference' such as 'setting levels of pay, setting a minimum guaranteed

¹⁰⁰ [Directive 2008/104/EC of 19 November 2008 on temporary agency work.](#)

¹⁰¹ [Directive 96/71/EC of 16 December 1996 concerning the posting of workers in the framework of the provision of services](#) categorises "conditions of employment" as encompassing "minimum rates of pay, including overtime rates." However, in a political response to Laval etc., the directive was amended in 2018 and this reference to pay has been expanded to refer to "remuneration, including overtime rates." See: [Directive \(EU\) 2018/957 of 28 June 2018 amending Directive 96/71/EC concerning the posting of workers in the framework of the provision of services.](#)

¹⁰² For more on this question see Zimmer, Reingard. "Living Wages in International and European Law." *Transfer: European Review of Labour and Research* 25, no. 3 (2019): 285-299.

*EU wage, establishing the equivalence of all or some of the constituent parts of pay.' This is because, in the present state of Community/EU law, it was considered appropriate to exclude determination of the level of wages from harmonization under Art 153 TFEU.*¹⁰³

This interpretation was reinforced in the 2010 *Bruno and Others* case,¹⁰⁴ where the ECJ stated:

*"That exception must therefore be interpreted as covering measures – such as the equivalence of all or some of the constituent parts of pay and/or the level of pay in the Member States, or the setting of a minimum guaranteed wage – which amount to direct interference by European Union law in the determination of pay within the Union. It cannot, however, be extended to any question involving any sort of link with pay; otherwise some of the areas referred to in Article 137(1) EC¹⁰⁵ would be deprived of much of their substance."*¹⁰⁶

In other words, while the EU *cannot* legislate to set individual wage levels, harmonise pay, or introduce an EU-wide minimum wage, it *can* regulate working conditions—including measures that indirectly relate to pay—so long as they do not constitute direct interference in wage determination.

As Kilpatrick and Steiert summarise:

*"Time and time again, the Court has reiterated that a measure that does not set individual wage levels, harmonize a minimum level wage or the level of the various wage constituents does not 'amount to direct interference'."*¹⁰⁷

The Careful Crafting of the AMWD

The AMWD is carefully crafted to avoid direct interference in setting wage levels. It does not prescribe what minimum wages should be, nor does it establish specific thresholds. Instead, it provides a procedural framework to ensure that member states with statutory minimum wages implement adequate minimum wages through a structured approach. The directive outlines the mechanisms by which minimum wages are determined, but it does not dictate the actual wage levels themselves.

At times, there has been confusion regarding this distinction. Some reports have inaccurately suggested that the AMWD mandates minimum wages be set at either 60% of the gross median wage or 50% of the gross average wage. However, this is a misinterpretation. The directive merely states that member states with statutory minimum wages must *consider* "indicative reference values" when determining minimum wages. It does not mandate what those values should be. Rather, it explicitly states that member states "*may* use indicative reference values commonly used at international level such as 60% of the gross median wage and 50% of the gross average wage" (emphasis added).

Thus, the directive stops short of establishing wage levels. As Kilpatrick and Steiert observe, the Article 153(5) pay "exclusion was front and centre in the legislature's mind when designing the AMWD. Without that exclusion, which the legislature took seriously, the Directive would have been

¹⁰³ Kilpatrick, Claire, and Marc Steiert. [A Little Learning Is a Dangerous Thing: AG Emiliou on the Adequate Minimum Wages Directive \(C-19/23. Opinion of 14 January 2025\)](#). EUI Working Papers, 2025, p.7.

¹⁰⁴ This judgement repeats verbatim many of the points in the judgement on the 1997 case by Ireland's Impact trade union.

¹⁰⁵ This article is now Article 153(1) of the TFEU.

¹⁰⁶ Joined Cases C-395/08 and C-396/08, *Istituto Nazionale della Previdenza Sociale (INPS) v. Bruno*. Judgment of the Court (Second Chamber) of 10 June 2010.

¹⁰⁷ Kilpatrick, Claire, and Marc Steiert. ["A Little Learning Is a Dangerous Thing"](#). p.10

designed very differently."¹⁰⁸ The directive is written with deliberate precision to ensure it does not cross the line into setting wages. One scholar has described this as "walking a tightrope."¹⁰⁹

This careful approach is reinforced in Recital 19 of the AMWD, which explicitly states:

"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 further clarifies:

"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."

Advocate General Emiliou acknowledges this cautious approach, writing in his opinion:

*"In my view, it is obvious ... that the EU legislature did not ignore that, when adopting the AMW Directive, it was walking on thin ice in respect of the 'pay' exclusion contained in Article 153(5) TFEU (or, as some authors have said, walking on a 'tightrope')."*¹¹⁰

While the directive may have been carefully designed to stay within the EU's legal competence under the Treaties, the key legal question remains: has it successfully remained on solid ground? If it has gone *up to* but not *beyond* the limits of its competence, then it has not exceeded the authority granted under the Treaties.

Indeed, the AMWD has undergone extensive legal scrutiny, and time and again, it has been found to have a sound legal basis in the Treaties.

Despite this, AG Emiliou ultimately sided strongly with Denmark, concluding that the directive "*directly interferes with the 'pay' exclusion in Article 153(5) of the TFEU.*"¹¹¹ He therefore recommended that "*the AMW Directive must be annulled in full.*"¹¹²

AG Emiliou's Opinion

At the outset, it is important to note that AG Emiliou acknowledges the argument outlined above, namely, that the Court has consistently interpreted Article 153(5) TFEU restrictively. He observes:

"...the Court has already provided indications as to how the exclusion relating to pay must be understood. Indeed, the Court has consistently held that that exclusion must be construed as

¹⁰⁸ Kilpatrick, Claire, and Marc Steiert. "[A Little Learning Is a Dangerous Thing](#)." p.3.

¹⁰⁹ Garben, Sacha. "Choosing a Tightrope Instead of a Rope Bridge – The Choice of Legal Basis for the AMW Directive." In *The EU Directive on Adequate Minimum Wages – Context, Commentary and Trajectories*, edited by Luca Ratti, Elisabeth Brameshuber, and Vincenzo Pietrogiovanni, 25–42. Hart Publishing, 2024, p. 25.

¹¹⁰ Emiliou, Nicholas. *Opinion of Advocate General in Case C-19/23: Kingdom of Denmark v. European Parliament and Council of the European Union*. Delivered January 14, 2025. Court of Justice of the European Union, paragraph 50.

¹¹¹ Ibid., paragraph 95.

¹¹² Ibid., paragraph 96.

covering measures – such as the equivalence of all or some of the constituent parts of pay and/or the level of pay in the Member States, or the setting of a minimum guaranteed wage – that amount to a direct interference by EU law in the determination of pay within the European Union. In that regard, the Court has made clear that the 'pay' exclusion cannot be extended to any question involving any sort of link with pay; otherwise, some areas referred to in Article 153(1) TFEU would be deprived of much of their substance.”¹¹³

Given that AG Emiliou accepts that the Court has interpreted Article 153(5) as applying only to measures directly affecting “the equivalence of all or some of the constituent parts of pay and/or the level of pay in the Member States, or the setting of a minimum guaranteed wage,” why does he nevertheless conclude that the AMWD “directly interferes with the ‘pay’ exclusion in Article 153(5)” and “must be annulled in full”?

The Core of Emiliou's Argument

While AG Emiliou's opinion is detailed and extensive, the core of his argument is remarkably straightforward. He contends that the AMWD is fundamentally different from previous EU legislation considered by the Court. He asserts that earlier rulings:

“...concerned instruments that, unlike the AMW Directive, had as their object to regulate a matter other than pay.”¹¹⁴

In previous cases, he argues,

“...the Court was merely seeking to ensure that that provision did not make the adoption of instruments which do not have as their object to regulate pay impossible merely because they had repercussions on pay.”¹¹⁵

In other words, for AG Emiliou, everything hinges on the *object* of the directive. His reasoning is, in essence, that if a directive's primary object is something other than pay, then the pay exclusion does not apply. However, if the object *is* pay, then the exclusion applies, and applies comprehensively. He writes:

“In my view, the term ‘pay’ is intended to cover all aspects of the Member States’ wage-setting systems (including the modalities or procedures for fixing the level of pay), and not merely the level of pay.”¹¹⁶

AG Emiliou then argues that the *object* of the AMWD is, unequivocally, pay. He writes:

“Turning now to defining the object of the AMW Directive, I shall begin by stating the obvious... the directive at issue in the present case is ‘on adequate minimum wages in the European Union’. It contains, in its very title, the word ‘wages’. That constitutes, in my view, a clear and even obvious sign that the object of the AMW Directive is to regulate ‘pay’.”¹¹⁷

¹¹³ Ibid., paragraph 40.

¹¹⁴ Ibid., paragraph 57.

¹¹⁵ Ibid., paragraph 58.

¹¹⁶ Ibid.

¹¹⁷ Ibid., paragraph 74.

He further emphasises:

*"That first impression is then confirmed by Article 1 thereof, which is entitled 'Subject matter' and whose paragraph 1(a) and (b) states, in unambiguous terms, that, 'with a view to improving ... in particular the adequacy of minimum wages for workers in order to contribute to upward social convergence and reduce wage inequality', that directive establishes a framework for 'the adequacy of statutory minimum wages' and the promotion of 'collective bargaining on wage-setting'."*¹¹⁸

This is, in essence, the entirety of AG Emiliou's argument:

1. Previous case law does not apply because those cases dealt with legislation where the object was not pay.
2. The object of the AMWD is pay and, as such, it directly regulates pay.
3. Therefore, the directive violates Article 153(5).
4. Consequently, the entire directive should be annulled.

This same reasoning also underpins AG Emiliou's responses to Denmark's other legal arguments.

Emiliou's Argument applied to Denmark's Other Arguments

Denmark further argued that the AMWD breaches not only the "pay" exclusion in Article 153(5) TFEU but also the "right of association" exclusion in the same article. Additionally, Denmark contended that the directive could not be validly adopted under Article 153(1)(b) TFEU because its provisions on collective bargaining relate instead to matters covered by Article 153(1)(f) TFEU, which concerns "the representation and collective defence of the interests of workers" and requires a different legislative procedure. AG Emiliou rejected both arguments, reasoning that the *object* of the AMWD is pay, not the right of association¹¹⁹ or the representation of workers' interests.¹²⁰

However, his response to another of Denmark's claims is more perplexing. Denmark argued that if the entire directive were not annulled, then at the very least, Article 4(1)(d) and Article 4(2), which deal with collective bargaining, should be annulled. On this point, AG Emiliou writes: "As I have explained," the entire directive "is incompatible with the 'pay' exclusion in Article 153(5) TFEU."

Therefore, he states, the only remaining question is whether Article 4(1)(d) and Article 4(2) can be severed from the rest of the directive. He concludes that they *can* be severed, and thus,

*"...should the Court decide that the AMW Directive must not be annulled in its entirety, I would suggest it uphold the Kingdom of Denmark's alternative head of claim and annul Article 4(1)(d) and Article 4(2) of that directive."*¹²¹

The practical implications of this recommendation are difficult to reconcile. AG Emiliou appears to argue that if the Court does *not* accept his primary conclusion, that the directive should be annulled in full because its *object* is pay, then, paradoxically, it should *still* annul Article 4(1)(d) and Article 4(2),

¹¹⁸ Ibid., paragraph 74

¹¹⁹ Ibid., paragraphs 101-111

¹²⁰ Ibid.

¹²¹ Ibid., paragraph 129

which concern collective bargaining, on the basis that *the entire directive is about pay and should be annulled*.

This position raises a logical inconsistency. If the Court were to accept AG Emiliou's reasoning, then the entire directive would be annulled. If the Court were to reject his reasoning and uphold the directive, it is unclear why it should nevertheless accept his recommendation to annul only Article 4(1) (d) and Article 4(2), especially when his argument for doing so rests on the same premise that would have justified annulling the directive in full. It is difficult to imagine how the Court might conclude that AG Emiliou's argument is both correct *and* incorrect at the same time, yet that appears to be what he is advocating here.

Assessing AG Emiliou's Opinion

I have sought to present AG Emiliou's argument clearly and fairly, particularly his reasoning on why the AMWD breaches the pay exclusion and should be annulled. However, in outlining his broader analysis of Denmark's claims, I have already pointed to some of the peculiarities in his reasoning. Now, turning directly to an assessment of his core argument regarding the pay exclusion, it will become clear that his position is surprisingly weak.

To reiterate, AG Emiliou's argument is straightforward. He argues that previous case law does not apply because those cases did not concern legislation where the "object" was pay. And, since the "object" of the AMWD is pay, it follows that the directive breaches Article 153(5) and must therefore be annulled in its entirety.

This argument hinges on two key claims:

1. The AMWD is fundamentally different from previous legislation examined by the Court because its "object" is to regulate pay directly.
2. The "object" of the AMWD is pay.

Both claims, however, rest on shaky foundations.

A New and Unfounded Distinction

AG Emiliou's assertion that the AMWD differs from previous legislation depends on a rigid distinction: there are directives where the "object" is pay, and those where the "object" is something else but which merely have "repercussions" on pay.¹²²

This distinction is questionable for two reasons. First, it leads Emiliou to dismiss previous case law outright rather than engaging with it. He simply asserts that it does not apply because the AMWD regulates pay directly, but he does not provide significant legal precedent to justify this demarcation. Second, the idea that EU law has never regulated pay in a "direct" way is simply not true.

As Kilpatrick and Steiert observe, "The problem with this bright-line reasoning between the AMWD as directly regulating pay and other EU legislation as not doing so is that it is rapidly belied." They cite four examples of EU directives that directly regulate pay in ways that, under AG Emiliou's framework, would seemingly be impermissible.¹²³

¹²² Kilpatrick, Claire, and Marc Steiert. "[A Little Learning Is a Dangerous Thing](#)", p.9.

¹²³ Ibid., pp. 9-10.

- *The Pregnant Workers Directive (92/85)*, which requires Member States to provide adequate payment or allowances to workers on maternity leave.¹²⁴
- *The 2019 Work-Life Balance Directive (2019/1158)*, which includes nearly identical requirements for paternity leave.¹²⁵
- *The Working Time Directive (93/104)*, which guarantees paid annual leave.¹²⁶
- *The 2023 Pay Transparency Directive (2023/970)*, which directly intervenes in wage-setting practices.¹²⁷

Each of these directives contains provisions that regulate pay as a core element of their function. As Kilpatrick and Steiert conclude, existing EU law already “contains various measures that the AG would consider direct interference or direct regulation of pay.”¹²⁸

The Arbitrary Focus on the AMWD's “Object”

Even if one were to accept Emiliou's premise that previous case law does not apply, his method for determining the “object” of the AMWD is weak. As Kilpatrick and Steiert put it, he presents a “particularly weak argument that often boils down to a near obsession with the AMWD's title.”¹²⁹

As quoted earlier, Emiliou states:

*“I shall begin by stating the obvious... the directive ... contains, in its very title, the word ‘wages.’ That constitutes, in my view, a clear and even obvious sign that the object of the AMW Directive is to regulate ‘pay.’”*¹³⁰

This reasoning is astonishingly superficial. If the presence of the word “wages” in the title is the determining factor, then the same logic would apply to other directives, such as the 2023 Pay Transparency Directive (2023/970) or the Equal Pay Directive (75/117),¹³¹ both of which explicitly reference pay in their names.

Kilpatrick and Steiert further challenge Emiliou's argument with a thought experiment: the Working Time Directive includes provisions on paid annual leave. If those provisions were extracted and placed in a separate Paid Annual Leave Directive, would that suddenly mean the directive breaches Article 153(5)? Surely, competence exclusions cannot depend on whether a measure regulating pay stands alone or is incorporated into broader legislation. Nor can the mere presence of “pay” or “wages” in a directive's title determine its legality.¹³²

¹²⁴ [Directive 92/85/EEC of 19 October 1992 on the introduction of measures to encourage improvements in the safety and health at work of pregnant workers and workers who have recently given birth or are breastfeeding](#), OJ L 348, 28.11.1992.

¹²⁵ [Directive 2019/1158/EU of 20 June 2019 on work-life balance for parents and carers and repealing Council Directive 2010/18/EU](#), OJ L 188, 12.7.2019.

¹²⁶ [Directive 93/104/EC of 23 November 1993 concerning certain aspects of the organization of working time](#), OJ L 307, 13.12.1993.

¹²⁷ [Directive 2023/970 of 10 May 2023 on pay transparency](#), OJ L 132, 17.5.2023.

¹²⁸ Kilpatrick, Claire, and Marc Steiert. “*A Little Learning Is a Dangerous Thing*”, p.10.

¹²⁹ *Ibid.*, p.8.

¹³⁰ Emiliou, Nicholas. *Opinion of Advocate General in Case C-19/23: Kingdom of Denmark v. European Parliament and Council of the European Union*, paragraph 74

¹³¹ This directive was combined with other directive in 2006 in the replacement Equal Treatment in Employment and Occupation Directive (2006/54). [‘Directive 2006/54/EC on the Implementation of the Principle of Equal Opportunities and Equal Treatment of Men and Women in Matters of Employment and Occupation \(Recast\)’](#), OJ L204, 26.7.2006, pp.23-36’.

¹³² Kilpatrick, Claire, and Marc Steiert. “*A Little Learning Is a Dangerous Thing*”, pp.8-10.

Indeed, if the problem AG Emiliou identifies is simply that the AMWD's "object" is pay because of its title, then the issue could be resolved trivially, by renaming the directive.¹³³

Misrepresentation of the AMWD's Legal Basis

Beyond the title, AG Emiliou attempts to reinforce his argument by citing the directive's provisions. However, his approach here is equally problematic. In order to demonstrate that the "object" of the directive is pay, he quotes the directive as follows:

"With a view to improving ... in particular the adequacy of minimum wages for workers."

Yet, this quotation is misleading. It includes an ellipsis that omits a crucial part of the sentence. The full text actually states:

"With a view to improving living and working conditions in the Union, in particular the adequacy of minimum wages for workers."

By removing the reference to "working conditions," Emiliou distorts the directive's stated objective. His argument depends on erasing the directive's explicit legal aim, improving living and working conditions, so that he can claim its sole object is regulating pay. This selective quotation is not just weak; it is actively misleading.

Policy Motivations and Ideological Bias

Finally, Emiliou's opinion does not simply rest on legal reasoning. At times, he appears to shift into broader policy discussions, particularly regarding the role of Social Europe. He notes that some interpret the directive as:

"Reflecting a broad shift in how adequate minimum salaries are perceived at EU level, as they are no longer viewed as an obstacle to competitiveness between Member States and economic growth, but as a precondition to economic development."¹³⁴

Rather than engaging with this perspective, Emiliou speculates that the framers of the EU Treaties excluded "pay" from EU competence for a different reason:

"I cannot rule out that the 'pay' exclusion also serves other purposes ... by preventing the harmonisation of the wage levels applicable in each of the Member States, the 'pay' exclusion contributes to maintaining competition between undertakings operating in the internal market"¹³⁵

This implies that he sees the AMWD as problematic not just for legal reasons but because it interferes with wage competition between Member States. His view echoes a familiar austerity-era argument, that raising or even defending workers' living standards is an obstacle to growth and competitiveness. The European Trade Union Confederation have expressed particular surprise at this section of the opinion:

¹³³ Ibid.

¹³⁴ Emiliou, Nicholas. [*Opinion of Advocate General in Case C-19/23: Kingdom of Denmark v. European Parliament and Council of the European Union*](#), paragraph 11.

¹³⁵ Ibid., paragraph 68.

"This threshold of decency is now in the crosshairs of the opinion, which shockingly makes the case for competition within the EU based on lowering minimum wages."¹³⁶

Further evidence of his ideological slant emerges in what Kilpatrick and Steiert call "a baffling presentation of Social Europe." For instance, he claims:

"The adoption of the Protocol on Social Policy and the Agreement on Social Policy ('the Social Chapter'), annexed to the Maastricht Treaty, was the first attempt at 'constitutionalising' EU social policy."¹³⁷

This is an odd assertion, as it ignores the long history of Social Europe, which predates Maastricht.¹³⁸ Similarly, he states:

"To my knowledge, the AMW Directive is, however, the first legal instrument at EU level in the field of minimum wages."

This would surely come as a surprise to Greek and Irish workers whose minimum wages were cut under the Memoranda of Understanding imposed during the financial crisis.¹³⁹

Indeed as Roland Erne, Professor of European Integration and Employment Relations at University College Dublin, has pointed out, the Court of Justice itself has "previously rejected union challenges to Council decisions imposing austerity conditions, confirming that the Council could make bailout funding conditional on wage and pension cuts or labour market deregulation." There is a simple problem here, "how can it be argued that the EU lacks the authority to establish a framework for adequate minimum wages after a decade of EU interventions that pressured governments to cut minimum wages and marketise collective bargaining?"¹⁴⁰

Erne points out that while Emiliou cites Article 2 of the Treaty on European Union to argue that the directive should be annulled to preserve a "a European Union based on the rule of law"¹⁴¹, Article 2 states rather that "The Union is founded on the values of respect for human dignity, freedom, democracy, equality, the rule of law and respect for human rights..."¹⁴² Important here is that, according to the Treaty, the European Union is also based on democracy. Erne argues that even if we grant that there is some ambiguity around the meaning of Article 153:

"the Court would do well to defer to the EU's democratic legislative process. The ordinary legislative procedure, involving the European Parliament, the Council, social partners under Article 154 TFEU and national parliaments via the yellow card procedure introduced by the Treaty of Lisbon, is the proper forum for resolving contested political issues. Emiliou, in his previous capacity as Cyprus's permanent representative to the Council, participated in this very process. It is now his legal opinion that seeks to overturn it. ... If Emiliou's opinion prevails, the

¹³⁶ European Trade Union Confederation (ETUC). "[EU Support for Minimum Wages and Collective Bargaining Threatened by Outlier Opinion](#)." Press release. February 7, 2023.

¹³⁷ Emiliou, Nicholas. *Opinion of Advocate General in Case C-19/23: Kingdom of Denmark v. European Parliament and Council of the European Union*, paragraph 28.

¹³⁸ Kilpatrick, Claire, and Marc Steiert. "[A Little Learning Is a Dangerous Thing](#)", p.11

¹³⁹ It has been made clear that these Memoranda of Understanding constitute part of EU law. See: Kilpatrick, Claire, and Marc Steiert. "[A Little Learning Is a Dangerous Thing](#)", p.12.

¹⁴⁰ Erne, Roland, "[The EU Minimum Wage Directive: To Be or Not To Be?](#)" TASC Blog, February 26, 2025.

¹⁴¹ Emiliou, Nicholas. *Opinion of Advocate General in Case C-19/23: Kingdom of Denmark v. European Parliament and Council of the European Union*, paragraph 1.

¹⁴² Treaty on European Union (TEU), consolidated version, OJ C 202, 7.6.2016.

popular legitimacy of the EU will be in tatters. European workers will not understand why the many business-friendly EU governance prescriptions on wage cuts are legal while a labour-friendly directive on adequate minimum wages is not.”¹⁴³

The Court of Justice Judgement

While AG Emiliou's argument is straightforward, it is deeply flawed. It rests on an arbitrary and unsupported distinction between directives that “regulate” pay and those that merely “affect” pay. His evidence that the AMWD's exclusive “object” is pay is weak, hinging on selective quotations and an overreliance on the directive's title. Moreover, his reasoning appears to be motivated, at least in part, by an ideological preference for wage competition over social protections.

Given these weaknesses, one can only hope that the Court of Justice does not follow his reasoning.

¹⁴³ Erne, Roland, “[The EU Minimum Wage Directive: To Be or Not To Be?](#)”

Part V: What the annulment of the AMWD would mean for Ireland

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AG Emiliou's opinion essentially calls for a return to the failed status quo of the European Union during the Eurocrisis. It is crucial to reiterate that these policies failed—socially, economically, and politically.

Socially, they exacerbated inequality, in-work poverty, and social precarity. Economically, they created significant imbalances within the EU, weakened growth prospects, and fostered an unsustainable dependence on exports rather than domestic demand. Politically, they promoted an economic governance model that was unaccountable to European citizens, fuelling Euroscepticism, delegitimizing the EU, and contributing to the rise of the far-right.

In response to these failures, the past decade has seen a push for a renewal of the European Social Model. This model is based on dialogue between social partners—workers and employers. However, for meaningful dialogue to occur, both sides must be organised through representative organizations. As Recital 16 of the directive highlights:

"traditional collective bargaining structures have been eroding during recent decades, due, inter alia, to structural shifts in the economy towards less unionised sectors and to the decline in trade union membership, in particular as a consequence of union-busting practices and the increase of precarious and non-standard forms of work."

This process has been particularly severe in Ireland, where union density has fallen from approximately 57% in the late 1970s and early 1980s¹⁴⁴ to around 22% today.¹⁴⁵ While public sector union density remains above 50%, it is close to 10% in the private sector.¹⁴⁶

Historically, Ireland followed an "Anglo-Saxon" industrial relations model, characterised by decentralised collective bargaining and frequent firm-level disputes. The introduction of social partnership in the late 1980s shifted Ireland towards a more European model of industrial relations based on dialogue. However, with the collapse of social partnership during the crisis—while public sector wage agreements continued—a clear divide has emerged: the public sector benefits from collective bargaining, while most private sector workers do not. It remains uncertain whether this division is sustainable.

For the European Social Model to have a future, both at the EU level and in Ireland, the proportion of workers represented by unions and covered by collective bargaining agreements must increase. Collective bargaining has been important in addressing the global financial crisis¹⁴⁷ and the pandemic, such as by facilitating short-time working schemes, health and safety regulations and remote

144 OECD/AIAS, *ICTWSS Database: Institutional Characteristics of Trade Unions, Wage Setting, State Intervention and Social Pacts* (archived version, October 3, 2023; Paris: OECD, 2023).

145 Reidy, Owen, *Opening Statement by Owen Reidy, General Secretary of ICTU to the Oireachtas Committee on Enterprise, Trade and Employment*, January 24, 2024.

146 Walsh, Frank, *Trade Union Membership in Ireland and the Implications for Centralised Bargaining*. Presented at the NERI Labour Market Conference, May 2024. Dublin: Nevin Economic Research Institute.

147 Guyet, Rachel, David Tarren, and Charles-Édouard Triomphe. *Social Dialogue in Times of Global Economic Crisis*. Luxembourg: Publications Office of the European Union, 2012.

working.¹⁴⁸ It has also been identified as an appropriate coordination process to develop policies to combat climate change.¹⁴⁹ The alternative to a model based on dialogue between social partners is one where such dialogue is absent. While some employers may see this as advantageous, it could push unions to adopt a more adversarial approach.

Beyond workplace dynamics, declining unionization presents broader societal risks. Without strong collective bargaining, issues such as declining living standards, weak economic demand, and the rise of the far-right may continue to grow as problems. Research indicates that unionization not only improves wages and working conditions but also fosters political engagement and democratic participation.¹⁵⁰ Union members, especially those aged 18-24, are significantly more likely to vote and engage in political activities than their non-unionised peers.¹⁵¹ As some have argued, "the decline in union density and the dilution of the collective bargaining effect is likely to increase the drift towards populist and authoritarian forms of government."¹⁵²

The challenges that prompted the introduction of the EU Directive on Adequate Minimum Wages persist. Regardless of the Court of Justice's decision on the directive, the commitment by the European Parliament and nearly all EU member states to improving living and working conditions—through better wages and stronger collective bargaining—remains crucial. Even if the directive is annulled, its underlying goal endures.

Member states, including Ireland, must prioritise reducing low wages and in-work poverty. Economic growth should benefit all workers, not just high earners. To this end, governments must enhance rights of workers to join unions and engage in collective bargaining.

As shown in Table 3 above, several measures can support this goal, including improving union access to workplaces, implementing protections against union-busting practices, safeguarding union representatives from discrimination, and ensuring the right to collective redress in case of agreement violations. Strengthening these protections is essential for a fairer, more sustainable labour market both in Europe and here in Ireland.

¹⁴⁸ Molina, Oscar. "[Collective Bargaining and Social Dialogue – Back to Normal in 2021?](#)" Eurofound, 2022 and International Labour Organization (ILO). *Social Dialogue Report 2022: Collective Bargaining for an Inclusive, Sustainable and Resilient Recovery*. Geneva: ILO, 2022.

¹⁴⁹ European Economic and Social Committee. *Opinion: Green Collective Bargaining*. SOC/747. 2023. And International Labour Organization (ILO). *User's Manual to the ILO's Guidelines for a Just Transition Towards Environmentally Sustainable Economies and Societies for All*. Geneva: ILO, 2021.

¹⁵⁰ Turner, Thomas, Lorraine Ryan, and Michelle O'Sullivan. "Does Union Membership Matter? Political Participation, Attachment to Democracy and Generational Change." *European Journal of Industrial Relations* 26, no. 3 (2020): 279–295.

¹⁵¹ Bryson, Alex, Rafael Gomez, Tobias Kretschmer, and Paul Willman. "Workplace Voice and Civic Engagement: What Theory and Data Tell Us About Unions and their Relationship to the Democratic Process." *Osgoode Hall Law Journal* 50, no. 4 (2013): 965–998.

¹⁵² Turner, T., Ryan, L. and O'Sullivan, M. (2020) 'Does union membership matter? Political participation, attachment to democracy and generational change', *European Journal of Industrial Relations*, 26(3): 279-295.

Conclusion: The Risks to Social Europe and EU Legitimacy

Conclusion: The Risks to Social Europe and EU Legitimacy

AG Emiliou's opinion, if followed, would set a dangerous precedent for Social Europe, striking at the core of the EU's ability to protect workers and improve living conditions across the Union. By drawing an artificial and legally unsubstantiated distinction between directives that "regulate" pay and those that merely "affect" pay, his reasoning risks severely limiting the EU's social competences.

More fundamentally, the implications of his argument extend beyond this specific directive. If the ECJ were to adopt Emiliou's reasoning, it would not only undermine the AMWD but it could also cast doubt on the legal foundation of other key EU rights: to annual paid leave and to pay replacement for maternity and parental leave. Such an outcome would erode trust in the EU's ability to deliver on the promises of social justice and economic fairness that underpin its legitimacy.

At a time when faith in European integration is under strain, and when the far-right Eurosceptic movement is gaining ground by portraying the EU as an undemocratic force that fails to protect ordinary citizens, a ruling based on Emiliou's opinion would be profoundly damaging. It would reinforce the perception that the EU prioritises market freedoms and competition over the rights and well-being of workers, feeding the narrative that Brussels is detached from social realities. In turn, this would provide further ammunition to those who seek to dismantle European integration from within.

If Social Europe is hollowed out, the legitimacy of the entire European project is at stake. The EU cannot afford to be seen as an institution that champions economic integration while neglecting the social dimension that gives it legitimacy. The AMWD is not just about adequate minimum wages—it is a test of whether the EU can still act as a force for improving living and working conditions. A decision that weakens this directive would not only harm workers but also deepen the legitimacy crisis of European integration itself, with consequences that could accelerate the rise of the Eurosceptic far right.

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Appendix 1: Some elements of the renewed Social Europe Agenda

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Regulations

- Establishment of the European Labour Authority (2019)
- The social related dimensions of "EU AI Act" (2024)

Directives

- The Adequate Minimum Wage Directive (2022)
- The revision to the Posted Workers Directive (2018)
- The Work-Life Balance Directive (2019)
- The Women on Boards Directive (2022)
- Corporate Sustainability Reporting Directive (2022)
- The Corporate Sustainability Due Diligence Directive (2024)
- Transparent and Predictable Working Conditions Directive (2019)
- The Pay Transparency Directive (2023)
- The two Equality Bodies Directives (2024)
- The ongoing work on the revision to the European Works Council Directive

Recommendations and Guidelines

- Recommendation on adequate minimum income ensuring active inclusion (2022)
- Recommendation on access to social protection for workers and the self-employed (2019)
- Guidelines on the application of Union competition law to collective agreements regarding the working conditions of solo self-employed persons (2022)
- Recommendation on strengthening social dialogue in the European Union (2023)

Since the launch of the European Pillar of Social Rights in 2017, there has been renewed momentum behind the Social Europe agenda. At the centre of this has been the European Directive on Adequate Minimum Wages, designed to ensure that statutory minimum wages across the EU are adequate, and to strengthen collective bargaining.

This momentum is now at risk.

Denmark has brought a case before the European Court of Justice, arguing that the EU lacks the legal competence to legislate in this area. In a significant development, Advocate General Nicholas Emiliou has recommended that the Court annul the directive.

"The EU Minimum Wage Directive and the Battle for Social Europe" examines the Advocate General's opinion, the directive itself, and what's at stake for the broader Social Europe agenda. His analysis warns that annulling the directive would not only weaken efforts to tackle low pay across the EU but could also have serious implications for the EU's legitimacy.



TASC (Think tank for Action on Social Change) is an independent progressive think-tank whose core focus is addressing inequality and sustaining democracy.

