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Judgment of the Court in Case C-19/23 | Denmark v Parliament and Council (Adequate minimum wages)

The Court confirms the validity of a large part of the Directive on adequate minimum wages in the European Union

However, it annuls the provision listing the criteria that must be taken into account by Member States with statutory minimum wages when setting and updating those wages, as well as the rule preventing those wages from being decreased when they are automatically indexed

Denmark referred the matter to the Court of Justice, requesting the annulment of the Directive on adequate minimum wages in the European Union in its entirety. It takes the view, inter alia, that that directive undermines the division of powers between the European Union and the Member States, as it amounts to direct interference in the determination of pay within the European Union and with the right of association, which, according to the Treaties, fall within national competence. The Court upholds Denmark's action only in part. It identifies interference of that nature in two provisions of the Directive addressed to Member States with statutory minimum wages and concerning the setting or updating of those wages. For the remainder, the Court dismisses Denmark's action, thus confirming the validity of most of the directive in question.

On 19 October 2022, the EU legislature, namely the European Parliament and the Council, adopted the Directive on minimum wages in the European Union.¹ With a view to improving living and working conditions in the Union, that directive establishes a framework to ensure, inter alia, the adequacy of statutory minimum wages in the Member States in which they exist, and to promote collective bargaining on wage-setting.

Denmark² brought an action before the Court of Justice seeking the annulment of that directive in its entirety.³

It submits that the Directive undermines the division of powers between the European Union and the Member States, as it amounts to direct interference in the determination of pay within the European Union and with the right of association, fields which, according to the Treaties,⁴ fall outside the EU's competences.

The Court holds that **the exclusion of EU competence provided for in the Treaties in the two fields in question does not extend to any question involving any sort of link with pay or the right of association**. Nor does it cover any measure which, in practice, would have effects or repercussions on the level of pay. Otherwise, certain competences conferred on the European Union to support and complement the activities of the Member States in the area of working conditions⁵ would be deprived of their substance. Thus, **the exclusion of competence applies only to direct interference by EU law** in the determination of pay and in the right of association.

After examining the purpose and content of the Directive, the Court **identifies interference of that nature in only two specific cases**.

In the first place, the Directive imposes on Member States with statutory minimum wages criteria⁶ to be taken into account in the procedures for setting and updating such wages. In doing so, **the Directive amounts to harmonisation of some of the constituent elements of statutory minimum wages, and, consequently, to**

direct interference in the determination of pay.

In the second place, the same applies in respect of the **rule which prevents the decrease** of the statutory minimum wage,⁷ where national legislation provides for an automatic mechanism for indexation adjustments of that wage.

Consequently, **the Court annuls the provisions of the Directive which amount to such direct interference by EU law in the determination of pay**, which therefore fall outside the scope of the EU's legislative competences. It dismisses Denmark's action as to the remainder.

In particular, the Court concludes that **the Directive does not amount to direct interference by EU law with the right of association**. It reaches in particular that conclusion with regard to the provision of the Directive on the 'promotion of collective bargaining on wage-setting', on the ground, inter alia, that that provision does not oblige the Member States to require a larger number of workers to join a trade union organisation. The Court also rejects Denmark's plea that the Directive was adopted on an **incorrect legal basis**.⁸

NOTE: An action for annulment seeks the annulment of acts of the institutions of the European Union that are contrary to EU law. The Member States, the European institutions and individuals may, under certain conditions, bring an action for annulment before the Court of Justice or the General Court. If the action is well founded, the act is annulled. The institution concerned must fill any legal vacuum created by the annulment of the act.

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The [full text and, as the case may be, an abstract](#) of the judgment is published on the CURIA website on the day of delivery.

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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.

² Supported by Sweden.

³ In the alternative, Denmark sought the annulment of Article 4(1)(d) and/or Article 4(2) of the Directive, which relate to the promotion of collective bargaining on wage-setting. According to Denmark, these provisions also encroach on the competences of the Member States.

⁴ Article 153(5) TFEU.

⁵ According to Article 153(1)(b) TFEU.

⁶ According to Article 5(2) of the Directive, those criteria include at least the purchasing power of statutory minimum wages, taking into account the cost of living, the general level of wages and their distribution, the growth rate of wages and long-term national productivity levels and developments.

⁷ Article 5(3) of the Directive.

⁸ In support of its application for the annulment of the Directive in its entirety, Denmark also claimed that, even if the subject matter of the Directive falls within the EU's competence, it is based on an inappropriate legal basis. Since it also concerns the representation and collective defence of the interests of workers and employers, it should have been adopted unanimously by the Council, whereas it was adopted by a qualified majority.