Minimum wage directive partially unlawful – an ECJ ruling and its consequences

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We have repeatedly reported on the Minimum Wage Directive (Directive (EU) 2022/2041 "on adequate minimum wages in the European Union"). Among other things, it sets out requirements for the adjustment of statutory minimum wages in the Member States.

The Directive interfered with the long-established principle whereby wage setting was reserved to national legislators and social partners (trade unions and employers' associations) in the Member States.

As previously reported, legal action was brought before the European Court of Justice (ECJ) challenging the Directive. On November 11, 2025, almost one year after the implementation deadline, the European Court of Justice has now ruled that the directive is partly unlawful.

What does the Directive say in principle?

The Minimum Wage Directive does not seek to establish a uniform minimum wage. Instead, it obliges Member States to introduce ***criteria*** for setting and updating minimum wages. The aim is to ensure that the respective minimum wage is ***adequate***.

According to Article 5 of the Directive, these criteria must include at least the following:

- 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;
- long-term national productivity levels and trends.

Furthermore, collective bargaining is to be strengthened. In particular, Member States with low collective bargaining coverage (such as Romania) are required to adopt measures.

What was the purpose of the lawsuit?

The dispute arose when Denmark filed an action for annulment before the ECJ in 2023 (Case C-19/23). Denmark's main argument was that the EU had exceeded its competencies under Article 153(5) of the TFEU (Treaty on the Functioning of the European Union).

The Directive constituted a direct interference with wage setting in the Member States, as it prescribed, among other things, quantitative criteria for adequate minimum wages and significantly influenced collective bargaining. It violates the principle of conferral.

Sweden shared these concerns. Both countries have decentralized, union-based wage-setting systems that do not provide for statutory minimum wages, but rely primarily on collective bargaining.

The Advocate General also expressly argued in favor of declaring the Directive entirely invalid.

What does this mean?

Article 151 TFEU describes the legitimate objectives pursued by the EU in the field of social policy (and thus labor law). Article 153 TFEU defines the areas in which the Union supports Member States in achieving these objectives.

However, Article 153 (5) explicitly excludes pay, the right of association, the right to strike, and the right to lock out workers from these areas.

Under the principle of conferral, the EU possesses only those competences that have been conferred upon it by the Treaties.

How was the decision made?

The ECJ has only overturned parts of the directive.

This applies in particular to the above-mentioned *criteria for setting minimum wages*: they constitute a direct interference in the Member States' sovereignty in wage-setting and therefore had to be declared null because the EU lacks jurisdiction in this area.

Otherwise, the directive was *upheld*. In particular, the Court found no competence overreach with regard to measures aimed at increasing collective bargaining coverage, as the right of association (such as the right to join a trade union) was not affected.

What does this mean for Romania?

Romania has aligned its legislation to the Directive by means of a law and a government decision, as previously reported.

Among other things, Romanian regulations stipulate that the minimum wage is set annually using a procedure that assesses the adequacy of the minimum wage.

This procedure relies, inter alia, on the very criteria listed in Article 5 of the Directive, which were transposed verbatim into Romanian law. On the one hand, the ECJ *did not declare the criteria themselves unlawful per se*. Therefore, in our opinion, they do not need to be removed from Romanian law. If the Romanian legislature considers them appropriate for national purposes, they may be retained.

On the other hand, the relevance of *measures to promote collective bargaining* should be emphasized once again. Romania has already enshrined such measures in its Labor Code and has also published an *action plan* (Government Decision 827/2025).

Conclusion

As expected, the Minimum Wage Directive was overturned – but somewhat unexpectedly, only in part.

For Romania, this does *not* automatically mean abandoning the criteria for setting the minimum wage. However, we believe that significant initiatives by employee representatives and public authorities to intensify the collective bargaining process are to be expected in the near future.

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