

# European Developments

Anne O'Connell, Principal, AOC Solicitors

## CJEU ANNULS PART OF THE ADEQUATE MINIMUM WAGES DIRECTIVE

Readers will recall our article in this journal earlier this year<sup>1</sup> on the Opinion of Advocate General Emiliou, in *Kingdom of Denmark v European Parliament and Council of the European Union* concerning Directive (EU) 2022/2041 on adequate minimum wages in the European Union ("EU") (the "AMW Directive"). On 11 November 2025, the Court of Justice of the European Union ("CJEU") issued its judgment<sup>2</sup> in which it annuls part of the AMW Directive while confirming the validity of the majority of it.

This case was where the Kingdom of Denmark, supported by the Kingdom of Sweden, asked the CJEU to annul the AMW Directive in its entirety, on the grounds that the European Parliament and the Council lacked competency to adopt the AMW Directive.

### The Law

Article 153 of the Treaty on the Functioning of the European Union ("TFEU") provides that the EU shall support and complement the activities of the Member States in certain fields, such as working conditions, representation and collective defence of the interests of workers and employers. However, subs.5 provides that 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."

As its principal head of claim, the Kingdom of Denmark submitted to the CJEU that the AMW Directive directly interferes with the exclusions on pay and the right of association provided for in subs.5 above.

### The Advocate General's Opinion

The Advocate General ("AG") in his opinion stated that as the AMW Directive has as its object the regulation of pay, it directly breached the pay exclusion in art.153(5) of TFEU. However, in relation to the right of association exclusion, the AG did not agree that the right of association equals the right to collective bargaining. The AG rejected the argument that the AMW Directive has as its object the regulation of the right to association. Ultimately, the AG concluded that the European Parliament and the European Council had indeed acted in breach of their jurisdiction by legislating in the area of pay, specifically excluded from the EU's

competence and proposed that the entire AMW Directive be annulled on that point.

### The Judgment

The CJEU did not agree with the AG that the entire Directive should be annulled but alternatively decided to annul only part of the Directive. However, it did agree with the opinion of the AG in that the exclusion of the EU's competence by the TFEU in respect of pay and the right of association does not extend to any sort of link with those areas being provided for in EU provisions. It also stated that the exclusion does not cover any measure which, in practice, would have effects or repercussions on the level of pay. The exclusion applies only to direct interference by EU law in the determination of pay and in the right of association. The CJEU referred to a number of decisions in respect of its decision.

In respect of art.4, which provides for measures to promote collective bargaining on wage-setting, the CJEU found that it is merely a means of achieving the main objective of the AMW Directive rather than being a distinct purpose of it. Article 4 does not require Member States to reach the threshold of 80 per cent of collective bargaining coverage, but to establish a "framework" of enabling conditions for collective bargaining and draw up an "action plan" to promote such bargaining with the involvement of the social partners. It found that, as art.4 does not oblige Member States to require a larger number of workers to join trade unions or to declare a collective agreement universally applicable, then it does not amount to direct interference by EU law in the determination of pay or the right of association.

However, in respect of art.5, the CJEU found that art.5(2) amounted to direct interference by EU law in the determination of pay within the European Union. It found that art.5(2) requires Member States with statutory minimum wages to ensure the use of the four elements listed in that provision in respect of the setting and updating of the statutory minimum wage. Those four elements are:

- "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".

The CJEU also found that the portion of art.5(3) which requires that Member States that use an automatic

mechanism for indexation adjustments of wages not to decrease the level of statutory minimum wage amounts to a direct interference by EU law in the determination of pay within the European Union.<sup>1</sup>

The remaining provisions of art.5 and arts 6 to 8 were found to provide for measures establishing a framework for the setting of adequate minimum wages with a view to improving living and working conditions in the EU and in relation to the scope of "working conditions" and fall within the competence of the EU.

Based on the above, the CJEU annulled art.5(2) and the part of the sentence "provided that the application of that mechanism does not lead to a decrease of the statutory minimum wage" in art.5(3) on the ground that those provisions fall within the exclusions of the EU's competences under art.153(5) TFEU. The annulment of art.5(2) necessitated the annulment of the part of the sentence in the fifth sentence of art.5(1) "including the elements referred to in paragraph 2".

As the Kingdom of Denmark was successful in part of its application, it was awarded one-third of its costs, but it had to pay two-thirds of the costs of the European Parliament and the Council of the European Union.

#### CONCLUSION

The social parties are delighted with the decision, as it did not have any impact on the promotion of collective bargaining. This is underway in Ireland with the publication of Ireland's Action Plan to Promote Collective Bargaining 2026–2030 in early November 2025. However, the European Union (Adequate Minimum Wages) Regulations 2024 (S.I. No. 633 of 2024), which was enacted in November 2024, amended the National Minimum Wage Act and included the four elements set out in the annulled art.5(2) of the AMW Directive. Therefore, a change in this legislation may be required as this amendment no longer has a valid legal foundation.

---

1 (2025) 22(2) I.E.L.J.

2 C-19/23 ECLI:EU:C:2025:865.