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Positive Integration, Not Competence Creep: The Court's Non-Revolutionary Rescue of the Minimum Wage Directive[α]

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1. No New Chapter in the Social Europe "Black Book"…

Waiting, apprehension, continuity, and equilibrium: these four terms encapsulate the essence of *Denmark and Sweden v Parliament and Council*[1], a case that has, with good reason, garnered more attention than any other in EU (social) law scholarship in recent years.

In the lead-up to the Court's decision, the case had been gathering widespread attention well beyond the circles of labour law scholars, insofar as it concerned a piece of EU legislation – Directive 2022/2041 on adequate minimum wages – which at the time of its long-awaited adoption had been greeted by many as a manifesto heralding a new era for European social law and policy[2], if not as a sign of an overall post-crisis and post-pandemic reorientation of EU priorities.

In truth, the high political expectations placed on the Commission's initiative – following the declared intentions put forward by the first von der Leyen Commission since taking office[3] – were not matched by the final text of the Directive. As it is well known, the initial momentum of the Commission soon had to contend with a series of "obstacles" of various natures: from vigorous objections coming from an unprecedented cross-sectional coalition of member states, ranging from the Visegrad populists to the "frugal" states of Central Europe and the Scandinavian social democracies, to the refusal of both social partners to embark on a negotiation process on the Commission proposal under Article 154(4) of the Treaty. As a result, the final text was admittedly less ambitious than the original intentions, abandoning any perspective to introduce statutory minimum wage mechanisms in countries that never had such instruments (Italy, Austria, Denmark, Sweden, and Finland), and instead accepting the idea of a "dual regulatory channel": on the one hand, "refining" national legal frameworks of countries where a statutory minimum wage already exists (all Member States except the five previously mentioned); and on the other hand, allowing Member States currently lacking such mechanisms to continue without them, provided that "adequate" wage levels are guaranteed through sufficiently «strong and well-functioning» collective bargaining, as Recital 22 puts it.

Prudent as it is, the Directive nevertheless continued to be vehemently

[1] Case C-19/23 *Kingdom of Denmark v European Parliament and Council of the European Union* (hereinafter 'the judgment').
[2] See C. Kilpatrick, *The Roaring 20s for Social Europe. The European Pillar of Social Rights and burgeoning EU legislation*, 29 2 (2023) *Transfer* 203.
[3] *Workers in Europe should have a fair minimum wage that allows for a decent living, A strong social Europe for just transitions*, COM(2020) 14 final 14.1.2020.

opposed by "the Nordics" in the name of safeguarding a national social model – undoubtedly worth defending – traditionally based on collective agreements much more than on legislation. The action for annulment, in this context, was a natural epilogue to a political opposition whose *raison d'être*, however, was more a matter of principle[4] than a justified objection against a text that, indeed, does not in any way oblige Nordic states to modify a single aspect of their well-functioning contractual models of wage-setting.

As is well known, the Court essentially upheld the validity of the Adequate Minimum Wage Directive, departing from the outcome one could have statistically expected considering that annulment judgments align with the Advocate General's Opinion in over two-thirds of cases[5]. Yet, in this case the Grand Chamber almost entirely disregarded the AG's opinion, thus alleviating the concerns of those who feared that *Denmark and Sweden* v *Parliament and Council* could add another chapter to the small "black book" of the judicial history of social Europe, whose summary already includes *Viking, Laval, Rüffert, Alemo-Herron, EPSU* and other decisions that significantly eroded the legitimacy the Court had earned over time in the laborious shaping of what is still defined – with perhaps a somewhat *retro* terminology – as the "European social dimension".

2. … but the journey toward a decent wage still has a long way to go

Although some commentators assessed the Court's ruling in different terms[6], the Directive on adequate minimum wages is therefore fundamentally safe; and it was by no means a foregone conclusion that this would be the case. A certain degree of diversity in the Court's ruling assessment is, indeed, rather unsurprising. As always happens in cases where the applicant's claim is partially upheld, the 'half-full or half-empty glass' metaphor is highly tempting: to say that the Court *partially annulled* the Directive would be formally true but – arguably – substantially misleading, while it could be more fitting to say that the Court *partially*

[4] See A. Iossa, *All Quiet on the Northern Front — the EU Directive on Adequate Minimum Wages as Seen from Sweden,* (2025) *Comparative Labor Law & Policy Journal [Dispatch]* 2.
[5] The data, which comes from C. Arrebola, A.J. Mauricio, H. Jimenez Portilla, *An Economic Analysis of the Influence of the Advocate General on the Court of Justice of the European Union,* 5 1 (2016) *Cambridge J. Int'l & Comp. L*. 82, was confirmed by a 2019 study by the European Parliament's Research Service, *Role of Advocates General at the CJEU*.
[6] See the passionate editorial by S. Garben, *Tragedy of a Death Foretold - The Partial Annulment of the EU Minimum Wage Directive,* 6 (2025) *ELR* 2, according to whom «the Court annulled the provisions of Directive 2022/2041 that made this 'directive on adequate minimum wages' worth its title».

saved the Directive by annulling only some limited part of it which does not significantly alter its normative content (see below Sec. 6)[7].

Once one dismisses the messianic expectations of a Directive that never was, and accepts the idea that the text discussed before the Court was a mild compromise anchoring EU intervention on the two basic axes of promoting collective bargaining and setting minimum requirements for effective statutory minimum wages where they already exist, the premise – and indeed the conclusion – is that the Directive's political compromise basically stands. Viewed against this background, the real meaning of the case was therefore neither a life-or-death issue for the actual eradication of low-wage employment in Europe, nor was it about an EU assault on the industrial relations traditions of the Nordic social systems. What was at stake, rather, was merely the preservation of a timid and fragile – albeit politically relevant – initial attempt at building a European social policy aimed at ending – within the limits of the EU's narrow competencies on the matter – the previous austerity era.

Does this mean that the way is now paved for an inexorable march of progress toward the end of in-work poverty in Europe? Certainly not; but on the other hand neither was it the case before the decision of the Luxembourg Court. What seems to be unquestionable, however, is that the Directive's survival will bring debates on its implementation back on the Member States' agendas[8], while keeping discussion open about its capacity to provide an effective EU contribution to a much-needed adequate wage policy in Europe, as I'll try to summarize in the final section of this paper (see below, Sec. 8).

The asserted political significance of the Court's decision (which certainly pertains to the sphere of subjective evaluation), could not have been possible had the Court interpreted the legal issue of the EU competencies in a different way. The analysis therefore shifts to the strict legal aspects of the decision, where the Court's rescue of the Directive had to face the opposing vision of the Advocate General: a battle the Court won by deploying the weapon of "judicial conservation", relying on its established case law regarding the interpretation of the EU principle of conferral.

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[7] A 'surgical cut' as L. Ratti described it in his *Out of the Shadows: The Court of Justice and the Limits of EU Law Competence on Determining Minimum Wages*, (2025) *EU Law Live*. In the same vein A. Aranguiz, *On the frontlines of Social Europe: the Minimum Wage Directive*, according to whose opinion «The fact that the directive wasn't thrown out altogether was a huge success for social Europe […] The general part of it still stands and the two provisions that were annulled would not have had a big impact anyway».

[8] For a state-of-the-art overview of the implementation process, see T. Müller, *Here comes the sun. The formal transposition and political impact of the European Directive on Adequate Minimum Wages in the EU* (ETUI 2025).

3. The "short year" of the Directive

2025 was the "short year" of the Directive on adequate minimum wages. Beginning on 14 January with the filing of the AG's Opinion and ending on 11 November with the adoption of the Grand Chamber's judgment, this brief period was marked by a large number of doctrinal contributions – certainly unusual for pending proceedings – almost unanimously critical of the AG's positions with regard to a series of alleged violations of the principle of conferral[9].

In this context, the prolonged wait for the judgment – which lasted longer than average – was seen by some as a prelude to a possible judicial outcome that would be fatal to the Directive: if the Court does not immediately rule out the possibility of annulment, it was argued, it means that in Luxembourg the AG's arguments are not considered entirely without merit, or at least that the issue presents some elements of uncertainty that both the Council's legal service[10] and the majority of observers had previously dismissed, considering the doubts about EU competences and legal basis to be unfounded.

However, the reasons for the unusual length of the proceedings –

[9] See, with different nuances but all critical of the AG's Opinion, E. Brameshuber, *EU Competence in the Field of Social Policy: why the AG's Opinion on the Adequate Minimum Wage Directive in C-19/23 (does not) matter(s),* (2025) *EU Law Live*; N. Countouris, *Avoiding another 'Viking and Laval' moment – a critical analysis of the AG opinion on the Adequate Minimum Wage Directive,* 16 2 (2025) *European Labour Law Journal* 315; M. Delfino, *La competenza contesa fra Unione europea e Stati membri in materia di salari minimi adeguati. Note a margine delle Conclusioni dell'Avvocato Generale nella causa Danimarca c. Parlamento e Consiglio,* (2025) *RGL giurisprudenza online*; R. Erne *The EU Minimum Wage Directive: To Be or Not to Be?,* (2025) *Social Europe*; ETUC, *Counter-Opinion to the Opinion of Advocate General Emiliou delivered on 14 January 2025 in the case Denmark v EP and Council,* (ETUC 2025); C. Kilpatrick and M. Steiert, *A little learning is a dangerous thing: AG Emiliou on the Adequate Minimum Wages Directive (C-19/23, Opinion of 14 January 2025),* (2025) *EUI, LAW, Working Paper, 2025/02*; E. Menegatti, *Why the Directive on Adequate Minimum Wages does fit within EU competence. A response to the Advocate General's opinion,* (2025) *ETUI Policy Brief 2025.02*; G. Orlandini, *Tanto rumore per nulla? A rischio annullamento la direttiva sui salari minimi adeguati,* 1 (2025) *Diritti & Lavoro Flash* 4; E. Paulet, *Navigating Competence Boundaries – Advocate General Emiliou advises to annul in its Entirety the Minimum Wage Directive in Case C-19/23,* (2025) *EU Law Live*; A. Sgroi, *L'Europa sociale a processo: la direttiva sui salari minimi adeguati e il problema della base giuridica,* 7 (2025) *Working Papers di Fa.Ri.* For a cautiously supportive comment, LE Allies, *The EU legislator walking a tightrope over thin ice: A comment on the AG's Opinion in C 19/23 Denmark v Parliament and Council,* (2025) *European Law Blog*.

[10] During the troubled decision-making process that led to the adoption of the Directive, the Council's Legal Service issued an Opinion supporting the correctness of the chosen legal basis, which remained 'secret' for some time despite a request for access by a Swedish citizen. Only following the Ombudsman's intervention was a redacted version of the Opinion made public, but this did not prevent the reticent Council from being found guilty of *maladministration* in September 2023 even though the Directive had already been adopted.

almost three years from the action to the judgment – are likely to be found elsewhere. Certainly, there is no account, and probably never will be, of the *interna corporis* that accompanied the Court's decision-making process on this occasion. However, given the outcome, it is reasonable to assume that the protracted proceedings were due more to the political sensitivity of the issue than to actual legal uncertainties.

The Court's ruling – and this is a preliminary assumption that seems possible to make at the outset – is politically fundamental but not legally revolutionary. Its significance lies precisely in having preserved, rather than innovated, an interpretation of the Union's areas of social competence which – although broad or even, as has been critically said, «excessively Union-friendly»[11] – constitutes an appropriate counterbalance to other "encroachments" that in recent years have extended the scope of supranational rules on market integration to the detriment of social issues. The reference is not only to the "imperialism" of the rules on free movement and the consequent colonisation of many aspects of national social systems that has resulted from it, but also, and more directly, to the individual and collective disciplines of pay that have been adversely affected by the Union's economic policies at a time of austerity. If it is true that the adoption of the Directive on adequate minimum wages was a kind of remedy for the harshness of the Union's economic governance during the crisis years, then those who suggested reading the 11 November ruling, and the solution it offered to the problem of the Union's social competences, within the economic and political context referred to above, are probably not wrong: «The workers of Europe would simply not have understood why the EU possessed the power to cut wages and decentralise collective bargaining during the crisis, yet lacked the authority to establish a framework for adequate minimum wages and higher collective bargaining coverage rates»[12].

4. A "conservative" ruling

Having outlined the political context within which the Court essentially rejected the Danish action, and having noted that also non-legal considerations might help explain why the Court upheld a very limited part of one plea, we must now examine the Court's reasoning in greater detail.

At first glance, the idea that a "progressive" outcome can stem from a "conservative" interpretation may seem contradictory; yet – without exaggerating the adjectives, especially the first one – it accurately captures

[11] L.E. Allies, *cit.* at footnote n. 9.
[12] R. Erne, *EU Court Upholds Minimum Wage Directive in Victory for Social Europe*, (2025) *Social Europe*.

the essence of the case. As already mentioned, the Court's decision did not in any way alter previous case law, with which it is in fact fully consistent; it introduced no new judicial principles, relying instead on the consistent application of a well-established interpretation of the limits of the Union's social competence, which remained entirely unaffected by the AG's observations. EU judicial etiquette often discourages the Court from openly contradicting an Advocate General's opinion, tending instead simply to ignore arguments it finds unpersuasive. This is clearly what happened in the case at hand with regard to the heart of the matter, namely the application of the "direct interference test" to the contested legislation, which the AG had sought to reformulate on the basis of somewhat adventurous arguments. As is widely known, the Advocate General's entire reasoning was based on an apparently unassailable syllogism: Article 153(5) TFEU excludes Union competence in matters of pay; Directive 2022/2041 deals with pay; the Directive therefore exceeds the limits of the powers conferred on the Union and must consequently be annulled.

Aware that both the major and minor premises of the aforementioned syllogism required, respectively, a prior delimitation of the area covered by the exclusion clause, and a verification of the Directive's ability to affect it, the AG devoted considerable efforts to overcoming previous case law in which the Court had thoroughly outlined the boundaries of the exclusion referred to in Article 153(5) TFEU, both "in the negative", by defining what it *does not* imply (Sec. 5), and "in the positive", by strictly indicating what it can refer to (Sec. 6). The judgment of 11 November 2025 is nothing more than a patient reaffirmation by the Court of what it had already clarified with regard to both aspects, followed by an application of the principles thus reaffirmed to the specific case under examination.

5. The direct interference test "in the negative" (what the exclusion of pay from the Union competence does not entail)…

In a series of judgments handed down between 2007 and 2014, the Court of Justice repeatedly clarified that the limitation of competence contemplated by Article 153(5) TFEU cannot be extended to «any question involving any sort of link with pay; otherwise some of the areas referred to in Article 137(1) EC [now Article 153(1) TFEU] would be deprived of much of their substance»[13].

[13] Case C-307/05 *Yolanda Del Cerro Alonso v Osakidetza-Servicio Vasco de Salud*; Case C-268/06 *Impact v Minister for Agriculture and Food et al.*; Case C-395/08 *Istituto nazionale della previdenza sociale (INPS) v Tiziana Bruno and Massimo Pettini*; Case C-501/12 *Specht et al. v Land Berlin and Bundesrepublik Deutschland.*

The rationale behind such case law was, and is, abundantly clear: it is based not only on systematic arguments which inevitably lead to a restrictive interpretation of any derogation – in this case, of the Union's competence in employment matters – thus circumscribing the protected area of national competence regarding pay, but also, and above all, on the clear intention not to nullify a vast portion of the labour law regulations produced by the Union over time. While it may be excessive to claim that *all* labour law rules have some impact on pay, this has certainly been true for a large number of European Directives, the validity of which has never been contested on grounds of non-compliance with the exclusion clause referred to in Article 153(5). Suffice it to mention, without claiming to be exhaustive, EU legislation on posted workers, equal pay, maternity protection, workers' protection in the event of insolvency, pay transparency, and prohibitions of discrimination in temporary work, part-time work, and fixed-term contracts. In none of these cases did the exclusion of pay from the sphere of EU competence prevent the adoption, influence the interpretation[14], or lead to the annulment[15] of regulations undoubtedly affecting "pay".

AG Emiliou did not take these precedents – and, crucially, their underlying substantive rationale – into account, proposing instead a literal interpretation of the pay exclusion clause that was, to say the least, decontextualised and supported by arguments that were in some respects surprising. Ultimately, however, very little of the AG's hermeneutical efforts survived in the Court's judgment.

In particular, there is no trace of the fundamental argument used by the AG in an attempt to reduce, or rather nullify, the relevance of the aforementioned case law for decision-making purposes. The AG had argued that on occasions when the Court had limited the scope of the exclusion clause, the judges in Luxembourg had never ruled on the validity of regulations *directly* concerning pay[16]. The *Del Cerro Alonso, Impact, Bruno,* and *Specht* judgments, the AG maintained, all involved measures which –

[14] See, with reference to the Fixed-Term work Directive, the principle (also reiterated in the other judgments cited) affirmed in *Impact*, according to which 'the derogation in Article 137(5) EC [now Article 153(5) TFEU] does not preclude the interpretation of Clause 4 of the framework agreement as imposing on the Member States the obligation to ensure that fixed-term workers are also guaranteed the application of the principle of non-discrimination in relation to pay' (para. 125).

[15] In the recent action for annulment of the revised Posting of Workers Directive for alleged infringement of the limits of competence defined in Article 153(5), the issue was framed in a similar way by the AG in Case C-620/18 *Hungary v European Parliament and Council of the European Union*, paras 86-100, but the Court decided the case on different grounds, focusing on the identification of the legal basis rather than on the alleged lack of competence.

[16] Opinion of the AG, para. 58.

unlike the Directive on adequate minimum wages – concerned matters other than pay[17], with the result that they could not serve as binding precedents in the different situation of a directive concerning exclusively pay.

Ultimately, the AG sought to rewrite the Court's case law by ascribing a completely new meaning to it: namely, that EU law could affect pay when this is merely a side-effect of measures dealing with other matters; whereas on the contrary, when EU legislation deals *solely* with pay, Article 153(5) would preclude its validity from the outset. According to the AG, Directive 2022/2041 falls squarely into this latter category insofar as «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'»[18].

These highly debatable arguments sought to overturn well-established case law – a legitimate aim in itself – by relying on fragile legal reasoning that, perhaps inevitably, met with almost unanimous criticism. Objections targeted both the "nominalistic" criterion, which attaches decisive importance to the words appearing in the title of the Directive[19], and the "topographical" criterion, which draws the boundaries of national competence depending on whether supranational provisions are located within a regulatory framework exclusively dedicated to pay, or in the context of legislation that also has other purposes. Using the Working Time Directive paid leave provision as an example, Kilpatrick and Steiert rhetorically asked whether a hypothetical decision by the European legislator to extract the rule on holiday pay to place it within a directive dedicated solely to this issue would, for that reason alone, constitute a violation of Article 153(5). The answer is clearly no: violations of the principle of conferral, the authors observe, cannot depend on whether a measure regulating pay is autonomous or incorporated into broader legislation. Nor can the mere presence of the term "pay" or "wage" in the title of a directive determine its validity.

Essentially sharing this view, the Court rejected the action for annulment[20] by choosing to ignore some of the more creative legal constructions advanced by the Advocate General. Instead, it confirmed *expressis verbis* that the scope of the above-mentioned *Del Cerro Alonso, Impact, Bruno,* and *Specht* cannot be narrowed by applying the "topographical" criterion suggested by the AG. As it is now clearly stated

[17] AG's Opinion, para. 57.
[18] AG's Opinion, para. 74.
[19] In relation to which it has been caustically observed that if this were the case, it would suffice to change the title of the Directive (C. Kilpatrick and M. Steiert, *cit.* at footnote n. 9).
[20] Except for the marginal provisions discussed below (see Sec. 6.2.C).

in the very words of the Grand Chamber, the Court has always «interpreted the scope of the exclusion relating to 'pay' provided for in paragraph 5 of [Art. 153] *in general terms*, without focusing on the more or less close link with the subject matter of pay of the acts whose interpretation was sought»[21]. This clarification is fundamentally attributable to a "constitutionally oriented" interpretation of the limits of the powers conferred in social matters, which should now be considered as a principle of "living law" of the Union: the ability of the Union legislator to achieve the social policy objectives set out in the first paragraph of Article 151 TFEU, warned the Court, «*would be seriously compromised if that legislature were prevented from adopting measures which, in practice, have positive effects or repercussions on the level of pay*, and even if, to that end, such measures fully respected the diversity of the national practices of the Member States and the autonomy of the social partners»[22].

6. …and "in the positive" (when an EU intervention in matters of pay amounts to a breach of the principle of conferral)

With the statements made at the end of the previous paragraph, the Court certainly did not wish to deny that the Union's social action is still subject to a series of competence limits which successive reforms have never seriously called into question, but only to point out that, with regard to the exclusion clause on pay, the *direct interference test* must be carried out by carefully identifying when a supranational provision, regardless of its title or location, has a direct impact on pay, thereby limiting the scope of national competences and, above all, undermining the reasons that justify them.

As for those reasons, the reservation of national competence in matters of pay has nothing to do with «maintaining competition between undertakings operating in the internal market», as the AG suggested in what amounts to a legitimization of wage competition[23]. Nor can the rationale for the pay exclusion be unequivocally identified through an investigation into the intentions of the legislator as revealed by the *travaux préparatoires*, as the AG also proposed[24]. Rather, one cannot but rely on the authority of the body that holds the monopoly on interpreting the

[21] Para. 69 of the judgment. The italics are mine.
[22] Para. 71 of the judgment. The italics are mine.
[23] AG Opinion, para. 68.
[24] The AG's attempt to provide a historical reconstruction of the reasons behind Article 153(5) exclusion through examination of the preparatory work is severely criticised by C. Kilpatrick and M. Steiert, and A. Sgroi, both *cit.* at footnote n. 9.

Treaties, namely the Court itself, which on this occasion has once again clarified that «the exception relating to 'pay' set out in Article 153(5) TFEU is explained by the fact that fixing pay falls within the contractual freedom of the social partners at national level and within the relevant competence of Member States»[25]. The second part of this statement being a sort of tautology[26], the Court essentially reiterated a logic it has used in the past to rule that the pay exclusion clause is not violated provided that the contractual autonomy of the social partners is preserved. In other words, if the *rationale* of pay exclusion is to safeguard the freedom of national social partners to collectively negotiate wages, then EU regulatory intervention is admissible as long as it does not restrict the social partners' exercise of collective autonomy in determining pay. With these arguments, the Court firmly – but tacitly[27] – rejected the AG's proposal, which outlined the diametrically opposite principle: «the fact that an EU instrument or measure does not encroach upon the contractual autonomy of social partners', argued the AG, 'does not necessarily mean that it complies with that exclusion»[28].

Far from being a mere legal skirmish of purely theoretical interest regarding the rationale behind the rules, the point became decisive for the purpose of establishing whether and to what extent the various provisions of the Directive were liable to annulment. In this regard, the Court's review focused essentially on the two key provisions of the Directive: Article 4 on the promotion of collective bargaining (Sec. 6.1) and Article 5 on the procedure for determining adequate statutory minimum wages in countries where statutory wage-fixing models exist (Sec. 6.2).

6.1. The promotion of collective bargaining does not violate the Treaty; it implements it

Denmark and Sweden are well known for never having had systems for the statutory determination of minimum wages, instead reserving all competence in wage-setting to the collective autonomy of the social partners. It is therefore not surprising that the provisions of the Directive

[25] Para. 67 of the judgment.
[26] Since the reason for excluding EU competence cannot be based on its mere converse, i.e. the competence of the Member States.
[27] The Court's non-confrontational approach to the AG is also highlighted by E. Menegatti, *All's well that ends well? The Court's "saving" of the Adequate Minimum Wage Directive,* 18 2 (2025) *Italian Labour Law e-Journal.*
[28] AG Opinion, para. 69, formulated within a section pointedly entitled: '*The third fallacy: if a measure does not encroach upon the contractual autonomy of social partners, it complies with the 'pay' exclusion*'. Far from being a fallacy, this was precisely the principle (re)affirmed by the Court.

dedicated to collective bargaining were the real target of their judicial action, which, although directed at annulling the contested act in its entirety, contained a subsidiary claim requesting the annulment of (at least) Article 4 alone.

While this request of the two claimants might be understood as a proud defence of national industrial relations models already put under strain by the *Laval* and *Viking* doctrine, the position taken by the AG is far less understandable. In paras 90-93 of his Opinion, he proceeded from problematic premises to reach a conclusion that the Court ultimately declined to adopt. The AG's controversial reasoning can be distilled as follows: since the typical function of collective agreements in national systems is to determine wages, promoting collective bargaining would amount to a supranational intervention that contravenes the TFEU's exclusion of pay, insofar as by supporting collective bargaining the Directive effectively requires Member States to promote one of the two methods of determining minimum wages, thereby restricting their freedom to choose between different minimum wage models[29].

This perspective, deemed «incomprehensible» by commentators[30], not only completely obliterated the constitutional framework supporting social dialogue in the Treaties and the Charter of Fundamental Rights, but also entirely ignored the very category of *auxiliary legislation*[31] which clearly underpins Article 4 of the Directive[32].

The Court's response to the paradox constructed by the Advocate General – that exercising a Treaty-conferred power (the promotion of social dialogue) would amount to a violation of the Treaty itself (the pay exclusion in Article 153(5)) – could not have been clearer, thus averting the danger that the "Danish" case could become for adequate minimum wages what *Viking* and *EPSU* were for the right to strike and European social dialogue. In paras 76-85 of the judgment, the Court reconstructs an exegetical framework that leaves no room for misunderstanding, restoring Article 4 of the Directive to its role as a purely *enabling* provision that «does not interfere with the choice made by the Member States as to the wage-setting model [and] neither governs the content nor prescribes the result of collective bargaining»[33].

[29] AG Opinion, para. 122.
[30] E. Menegatti, *cit.* at footnote n. 9.
[31] A category which the Directive itself, however, addresses in rather cautious terms (M. Delfino, *cit.* at footnote n. 9).
[32] See A. Lo Faro, *Promotion of Collective Bargaining on Wage-Setting (Article 4),* in L. Ratti, E. Brameshuber, V. Pietrogiovanni (eds) *The EU Directive on Adequate Minimum Wages* (2025) Hart.
[33] Para. 78-79 of the judgment.

With these words, the Court confirms what several commentators had already noted: the Directive's regulation is cautious, attributing a presumption of adequacy to all wages, irrespective of level, provided they are negotiated in sufficiently widespread national collective agreements[34]. However, it is precisely this caution that has prevented the promotional legislation in Article 4 from being considered as "directly interfering" with pay.

Similarly, the analysis of Article 4 enabled both the Court and the AG to dismiss the claim that by promoting collective bargaining the Directive encroached upon another area reserved to Member States, namely the right of association, which Art. 153(5) of the Treaty excludes from the sphere of EU competences. In paras. 118-128 of the judgment, the Court first established a clear conceptual separation between two notions that should not be blurred or equated. The right of association, the Court ruled, refers to the freedom to form trade unions, or to join or not to join them, «but does not cover measures governing the right to collective bargaining between employers and workers» (which is basically all Art. 4 of the Directive is about). Secondly, once the two notions had been disentangled, the Court held that Art. 4 does not "directly interferes" with the right of association precisely because its auxiliary function in promoting collective bargaining cannot be equated with any intervention in the "establishment, functioning and administration" of associations/unions. Nor can the EU objective of extending the bargaining coverage be interpreted as a requirement to raise union membership, since "coverage rates" and "union-density rates" are, as every labour lawyer or industrial-relations scholar is aware, conceptually distinct.

6.2. Procedures, levels and constituent elements: the Directive passes two out of three 'direct interference' tests

According to a well-known formula first introduced in the *Impact* judgment, the European legislator can be found to have violated national competence in the field of pay only in the presence of «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 Community wage – which amount to direct interference by Community law in the determination of pay within the Community».

Absent a European minimum wage, the AG's *vis destruendi* focused on the interpretation of the first part of the *Impact* formula, concluding: *a)* that the harmonisation of the constituent elements of wages and/or their

[34] L. Ratti, *The Sword and the Shield: The Directive on Adequate Minimum Wages in the EU,* 52 2 (2023) *Industrial Law Journal* 477.

level is only an example of what the Union cannot do[35], and that therefore the area covered by exclusive national competence «also covers measures that harmonize other aspects of the Member States' wage-setting systems (including the modalities or procedures for fixing the level of pay)»[36]; and *b)* that, in any case, even limiting the analysis to the "levels and/or constituent parts" of minimum wages, several provisions contained in Article 5 would be liable to annulment as an expression of "direct interference" by the European legislator in the area covered by the reservation of national competence.

In essence, the AG's detailed opinion invited the Court to apply the direct interference test to three distinct regulatory aspects of Article 5 of the Directive: the procedures *(A)*, the levels *(B)*, and the constituent parts *(C)* of adequate minimum wages. The test, carried out by the Court in paragraphs 86-101 of the judgment, was passed in two out of three cases.

A. Procedures

Regarding the procedures – governed by paragraphs 1, 5 and 6 of Art. 5 – the Court rejected the AG's broad interpretation of the "*Impact* formula", offering instead a sort of authentic interpretation of its previous rulings, stating that what the AG viewed as merely illustrative must be instead understood as an exhaustive enumeration – which does not include procedures – of what constitutes direct interference. Consequently, the obligations imposed on Member States to adopt rules on the setting and updating of statutory minimum wages at least every two years, on the basis of clearly defined criteria that reflect their respective socio-economic conditions, as well as to designate or establish consultative bodies for this purpose, all in accordance with domestic practice and law – which is the basic content of Art. 5(1) - must be regarded as purely procedural measures which, as such, satisfy the (non-)direct interference test.

Nor can it be said, as the AG argued, that the measures in question are "substantive" simply because Article 12 of the Directive recognizes workers' right to redress, in the case of infringements of rights relating to statutory minimum wages or relating to minimum wage protection[37]. This guarantee is in fact recognized by the Directive only «where such rights

[35] In para. 53 of the AG's Opinion, it was stated that «in *Impact*, the Court did not go as far as to indicate that the 'pay' exclusion applied to the level of wages (that is to say, their precise figure or amount) exclusively […] In my view, the terms 'such as' and 'and/or the level of pay' show that the Court did not exclude that a direct interference with pay may occur even where the measure in dispute does not seek to harmonise the 'level of pay' in and of itself».
[36] AG Opinion, para. 59.
[37] This right, adds Article 13, must be backed up by sanctions that are «effective, proportionate and dissuasive»

are provided for in national law or collective agreements», as the Court rightly points out[38], while avoiding mentioning, *pro bono pacis*, that such a specification – absent from the original proposal – had been included in the final text precisely to allay the concerns of the applicants themselves, Sweden and Denmark...

B. Levels

With regard to levels, the issue – as agreed by both the AG and the Court – is intrinsically linked to the notion of adequacy, which not coincidentally scholars considered to be a «fundamental element for understanding Directive 2022/2041»[39].

In an overly expansive "fundamental rights" interpretation, the AG placed excessive weight on the prescriptive content of the Directive, inferring from it the existence of a subjective right to an adequate wage and thereby implying a flagrant violation of the competence limits set by the Treaty. The AG's construction was based in particular on the alleged existence of an EU-wide concept of adequacy grounded not only on Art. 5 of the Directive but also on Art. 31 of the Charter[40], the condition of applicability of which within Member States – namely "implementation of Union law" (Article 51(1) CFR) – was fulfilled precisely by the adoption of a directive that Member States are required to implement.

However desirable and hoped for by some, *the existence of a subjective right to an adequate wage cannot be inferred from the text of the Directive*, as several observers had already pointed out[41] even before the Court openly ruled it out: «neither Article 5 of the contested directive nor any other provision of that directive defines the concept of 'adequacy' of statutory minimum wages […] The adequacy of statutory minimum wages is, at most, an indicative value towards which Member States should aim […] Therefore, in view of the express reference made by that provision, inter alia, to national practices defined in national laws, the concept of 'adequacy' of statutory minimum wages cannot be regarded as an autonomous concept of EU law»[42].

The Court's words therefore leave no room for doubt as to the legitimacy of the Directive but, on the other hand, neither do they leave room for excessive hopes, if there ever were any, as to its actual ability to provide a parameter of 'adequate wages' in legal systems where this is not

[38] Para. 91 of the judgment.
[39] L. Ratti, *La misurazione delle soglie di adeguatezza del salario minimo nell'ordinamento multilivello,* 185 (2025) *Giornale di diritto del lavoro e di relazioni industriali* 63.
[40] See paras 81-82 of the AG Opinion.
[41] E. Brameshuber, *cit.* at footnote n. 9, L. Ratti, *cit.* at footnote n. 39.
[42] Para. 89-90 of the judgment.

already provided for. This is also because, as anticipated, the Court has expressly ruled out – with truly unobjectionable reasoning – that the prescriptive content of Article 5 of the Directive can be "supplemented" by the right to decent working conditions enshrined in the Charter. On this point, the AG's Opinion was particularly weak. By evoking the possible relevance of the Charter in supporting and expanding a subjective right to an adequate minimum wage, the AG takes for granted what should have been demonstrated: namely, the possibility of drawing from the text of the Directive a right to an adequate wage. With regard to this construction, the Court had little difficulty in stating that the absence of an EU competence on pay in the Treaty – and consequently of a right to an adequate wage in the Directive – cannot be obliterated by the right to a decent wage provided by Article 31 of the Charter[43]: «Under Article 51(2) thereof, the Charter does not extend the field of application of Union law beyond the powers of the Union or establish any new power or task for the Union, or modify powers and tasks as defined in the Treaties»[44].

C. Constituent elements

It is only regarding the final segment, concerning the constituent parts of pay, that the AG and the Court ultimately agreed, resulting in annulment of certain provisions of the Directive.

The first of these, introduced by a parliamentary amendment, passed largely unnoticed during the heated debates following the adoption of the Directive, and arguably rightly so. This provision, Article 5(3), was indeed quite redundant. On the one hand, it unnecessarily authorized Member States to do what they already to a large extent do, namely to provide for mechanisms for the automatic adjustment of statutory minimum wages to inflation trends. On the other hand, it took pains to prohibit what no one does, namely to let the automatic indexation of wages to result in decreases in statutory minimum wages. It is precisely this second part of the provision that led the Court to conclude – correctly, albeit without significant practical impact – that such a non-regression clause constituted direct interference by EU law in the determination of wage levels, and thus have to be annulled.

The second annulled provision – Art. 5(2) of the Directive – identified four criteria Member States were required to consider – along with any others defined at the national level – when determining and updating statutory minimum wages: purchasing power, wage levels, growth rates,

[43] Thereby excluding any EU-derived right to an adequate minimum wage and, consequently, any direct interference by the Union in an area reserved to national competence.
[44] Para. 93 of the judgment.

and productivity. In the Court's view, by mandating the use of these criteria, the EU legislator intruded into the constituent elements of minimum wages, thus failing to withstand the test of direct interference. As has been rightly observed[45], the Court's conclusions were certainly not inevitable, and the reasoning behind them does not appear to be unassailable. Regardless of the fact that – with the possible exception of GDP and employment trends – the Directive's criteria are already widely applied by Member States[46], the decisive factor precluding any finding of "harmonization" of the constituent elements of minimum wages should have been Article 5(1) of the Directive, empowering Member States to freely determine the 'relative weight' of the four criteria imposed by the supranational legislator, thereby allowing flexibility that arguably would have minimized the impact of any interference.

As already noted in the opening pages of this paper, the double amputation resulting from the Court's ruling leaves both the substance and the spirit of the Directive fundamentally unaltered. Indeed, should this not be the case – that is, should the two annulled provisions be deemed "vital" to the operation of the Directive – a partial annulment would not have been available to the Court. According to the Court's established doctrine of "severability", partial annulment of an EU act is only possible provided that the removal of the "illegal" parts does not alter its substance and/or the spirit. Conversely, if the annulled provisions were crucial to the main objectives of the legislation, they could not be severed and the entire act would have to fall[47]. Notably, in the case at hand the Court did not explicitly mention the severability doctrine; it just applied it, possibly considering – though this remains a matter of interpretation – that the case was sufficiently clear to demonstrate that the partial annulment it ordered was clearly unable to alter Directive "core". In this respect, partial annulment acts as a confirmation of the "half-full glass" metaphor: the very fact that the Court could annul only some provisions proves that they were not essential to the Directive as a whole.

That said, the marginal nature of the double partial annulment ordered by the Court can also be explained by other factors, which will be summarized in the conclusions, but not before briefly outlining the second plea, which addressed issues distinct from the existence of the Union's regulatory competence discussed thus far.

[45] E. Menegatti, *cit.* at footnote n. 27.
[46] See Eurofound *Minimum wages in 2025*: *Annual review* (2025 Minimum wages in the EU series, Publications Office of the European Union) for a comparative review, along with the national factsheets compiled by Eurofound for more detailed information.
[47] Case C-626/18 *Republic of Poland v European Parliament*.

7. Beyond competence: the choice of legal basis

With the second plea, Denmark and Sweden argued that even a judicial finding of the Union's regulatory competence could not have saved the Directive from annulment, contending that, in any event, such competence should have been exercised on different legal bases. Specifically, they argued that the Directive should have been based not only on Article 153(1)(b), authorizing Union action in the field of "working conditions", but also, in light of the provisions of Article 4 of the Directive, on Article 153(1)(f), which enables the EU to intervene in the field of "representation and collective defence of the interests of workers and employers".

In reality, the question was framed incorrectly because, even acknowledging the essential relevance of the provisions promoting collective bargaining, the Directive could not have relied on a "dual" legal basis. According to the established case law of the Court[48], such coexistence is not admissible when the two legal bases are "incompatible", meaning they require different decision-making procedures. This is exactly what occurs in the case in question, as regulatory action on representation and collective defence of the interests requires unanimity within the Council, whereas action on working conditions only requires a qualified majority.

Beyond the aforementioned procedural aspects, it must however be acknowledged that, to the extent it aimed to "unveil" one of the fundamental aspects of the Union's intervention in this area, the applicants' claim held *a certain degree of plausibility*. The Danish action indeed raised a substantial question which, unsurprisingly, had also been extensively debated by scholars: are we truly dealing with a regulation on adequate minimum wages or, given the vagueness of the relevant provisions[49], is this rather essentially a regulation supporting collective bargaining? This is an eminently conceptual question that, following the judicial action for annulment, became critical to the Directive's very survival: had its primary aim been to promote collective bargaining, the Directive would have required unanimous consent, which, as is widely known, was lacking on that occasion [50].

However, the AG and the Court agreed not to pursue this debate to its extreme consequences. Rather than embarking on the difficult path of an

[48] See, for all, case C-155/07 *European Parliament v Council of the European Union*, p. 37 and case law cited therein.
[49] As noted by T. Treu in *La decisione della Corte Europea sul salario minimo,* (2025) *Il Sole 24 ore NT+ Lavoro*, the measures appear in this regard to be «more of a recommendation than a directive».
[50] The Directive was adopted with Denmark and Sweden voting against it, while Hungary abstained.

"alternative" choice ("working conditions" *or* "collective representation and defence of interests"?), they opted for a "cumulative" logic ("working conditions" *and* "collective representation and defence of interests"), placing the two matters in an instrumental means-ends relationship: the promotion of collective bargaining serves the Directive's main objective, which remains the improvement of living and working conditions, particularly as regards the adequacy of minimum wages. In this perspective, the Court concludes, Article 4 «is merely a means of achieving the main objective of the Directive, rather than an autonomous and distinct purpose or component thereof. Article 4 therefore also falls within the scope of 'working conditions' referred to in Article 153(1)(b) TFEU»[51].

From a strict judicial standpoint, the action for annulment ultimately failed to meet the applicants' expectations. Unconstrained by a strict application of the *ne ultra petita* principle – which would have required ruling exclusively on the claimants' requests to annul either the entire Directive or, alternatively, Article 4 alone – the Court instead chose to invalidate only certain provisions of Article 5 which were designed to apply exclusively within systems of statutory determination of minimum wages that Denmark and Sweden have neither experienced nor are likely to adopt in the future.

8. Conclusions: A balanced compromise open to multiple readings

From the policy statements of the first von der Leyen Commission to the unsuccessful attempts to activate Art. 154 TFEU social dialogue procedures; from the lengthy and troubled trilogue navigating the turbulent waters of fierce bipartisan opposition to the announced Danish action for annulment; from the controversial Opinion of the Advocate General to the fragmented implementation process in the Member States, the ruling of the Court of Justice has brought to an end an intense five-year period in which the issue of adequate minimum wages dominated the institutional and scholarly landscape of European social policy.

Seen in the light of the broader political clash surrounding the adoption of the Directive, a lingering – albeit unprovable – suspicion persists that the compromise achieved by the Court through an essentially painless «surgical cut»[52] of the Directive, may have been shaped, at least in part, by preconceptions and sensitivities of a strictly political nature: with the

[51] Para. 136 of the judgment.
[52] L. Ratti, *cit.* at footnote n. 7.

«ghost of *Laval* and *Viking*»[53] still haunting the Nordic attitudes toward the Union, a desire to avoid further exacerbating "Nordic discontent" likely played a role[54]. True, the ruling did not affect the part of the Directive – Article 4 – on which the applicants had focused their criticism. Yet, some key passages of the judgment – notably the rejection of wage adequacy as an autonomous concept of EU law and the denial of an individual right to an adequate wage – may be read as responsive to "Nordic" concerns regarding the incompatibility of such elements with the collective bargaining models historically characterizing those countries. A small *placebo*, perhaps, to appease Nordic anxieties, without undermining the Directive's core content and, crucially, its politically symbolic value.

Looking ahead, it remains to be ascertained – outside the limits of a specific case – whether the Court's decision will have the capacity to act as a catalyst for revitalizing the prospects of a European policy against in-work poverty. Against this backdrop, the ruling lends itself to multiple interpretations, which are briefly summarized below.

(a) The quest for adequate wages: au-delà *of the Directive?* – From the standpoint of the Directive's actual capacity to achieve its stated objectives of reducing in-work poverty by guaranteeing adequate minimum wages, little has changed: there was little before the ruling, and there continues to be little afterwards. Although some commentators have portrayed the annulment of the four criteria in Article 5(2) as an irreparable mutilation that deprives the Directive of any prescriptive content[55], it is worth noting the preservation of paragraph 4 of the same article. This is significant because in the Directive's initial phase of implementation the "indicative reference values" of 60% of the median wage and 50% of the average wage provided therein have proven capable of significantly influencing the decisions of legislators and/or other national institutions in setting, and prospectively adjusting, statutory minima[56]. That said, the "bad but not new" news is the judicial certification that wage adequacy – mentioned 36 times in the text of the Directive, including in the preamble – «cannot be regarded as an autonomous concept of EU law»[57].

[53] N. Countouris. *The Adequate Minimum Wage Directive 2022/2041 before the Court of Justice,* 32 2 (2025) *International Union Rights* 10.
[54] On the sceptic attitude of Sweden toward EU initiatives in the social and welfare fiels, including the minimum wage Directive, see S. Schreurs and D. Bokhorst, *Overcoming the subsidiarity reflex? Sweden, the Netherlands and the making of social Europe,* (2026) *Journal of European Social Policy.*
[55] S. Garben, *cit.* at footnote n. 6.
[56] See T. Müller, *cit.* at footnote n. 8, who reports how in several cases (Czech Republic, Greece, Latvia, Slovakia) the post-Directive reforms have incorporated the quantitative parameters of the Directive in various ways, including as a future objective.
[57] Para. 90 of the judgment.

Yet, the Adequate Minimum Wage Directive is not the *sole* possible instrument for a supranational decent wage policy. The reference values of adequacy established in its Art. 5(4)[58] – though merely indicative, as Member States "*may"* use them – can, and indeed *should*, be interpreted through the lenses of other international law instruments whose relevance is dictated both by the very content of the Directive and by provisions of EU primary law. As to the former, the "integration" of international law standards into the interpretation and application of the Directive derives from explicit references in its recitals to ILO Conventions and provisions of the European Social Charter of the Council of Europe, which call for minimum wages that provide a decent standard of living[59]. As to the latter, it is Art. 151 TFEU that, as is well-known, stipulates that the Union and Member States must act «having in mind fundamental social rights such as those set out in the European Social Charter…».

Focusing specifically on the European Social Charter, Art. 4 of this instrument states that «All workers have the right to a fair remuneration sufficient for a decent standard of living for themselves and their families». As noted by several commentators[60], the European Committee of Social Rights (ECSR) has historically interpreted this rule with a view to consolidate a robust definition of a "decent wage", relying on indicators that the Directive formulates much too loosely[61]. Specifically, the ECSR requires minimum wage levels to cover not only basic survival needs but also active participation in cultural, educational, and social life. Furthermore, it applies stricter benchmarks – setting the threshold at 60% of the net average wage – to evaluate both statutory and collectively bargained minima, with the State bearing the burden of proving that, when wages fall below this level, adequate social transfers are secured to bridge the gap and ensure a decent living standard.

Admittedly, the peculiar 'non-judicial' enforcement mechanism of the European Social Charter of the Council of Europe – which, unlike the ECHR, is entrusted to a committee of experts rather than a Court – has historically

[58] *«Member States shall use indicative reference values to guide their assessment of adequacy of statutory minimum wages. To that end, they 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, and/or indicative reference values used at national level»*
[59] See Recitals n. 2, 4, 8, and 24 of the Directive.
[60] See G. Orlandini and A. Allamprese *Retribuzione adeguata e contrattazione sui salari nelle fonti sovra-nazionali*, forthcoming in V. Bavaro and G. Orlandini (ed.), *Il giusto Salario tra legge e contrattazione collettiva,* Futura Editrice; F. Dôme and A. Aranguiz, *Could the minimum wage directive weather future financial storms? Studying the potential to ensure upward convergence of minimum wages,* 16 2 (2025) *European Labour Law Journal* 212;
[61] The Annual Conclusions of the ECSR on Art. 4 of the European Social Charter are available here.

struggled to be "taken seriously", resulting in a sort of "lesser status" for the ESC compared to the ECHR, even if in the aftermath of the Eurozone crisis both instruments proved quite effective in countering some of the harshest austerity measures, as occurred in Greece and Spain[62].

It is beyond dispute that compensating for the weaknesses of an EU Directive by relying on the non-judicial interpretation of an international instrument is an uphill task, particularly when it comes to an issue like the minimum wage, where any consolidation of the notion of adequacy should carefully take into account the limited EU competence on "pay" and the Court's statement that wage adequacy «cannot be regarded as an autonomous concept of EU law». Nevertheless, it is evident that a European decent wage policy cannot stand on the fragile legs of the Directive alone, all the more so in a context where a panoply of multiple sources – the European Social Charter, the Charter of Fundamental Rights, the Social Pillar, the horizontal clause of Art. 9 TFEU – can no longer remain isolated from the "coordination" of economic policies developed under the European Semester. Whether the Directive could operate as the "Trojan horse" for a decent living standard paradigm within the broader EU economic governance mechanisms is far from certain, but its very existence at least provides a foothold.

(b) The competences of the Union – From a constitutional perspective, the judgment offers two key insights into the never-ending dispute over the allocation of regulatory powers within the EU's increasingly integrated legal order. Firstly, it confirms that the powers of the Union and those of the Member States cannot always be understood as hermetically sealed entities, ignoring the multi-level reality in which the former inevitably spill over into the latter. The case of support for collective bargaining is particularly illustrative in this regard: the Advocate General's contention that promoting (wage-setting) bargaining would constitute an undue encroachment by the Union into an area reserved to the Member States, rested on an overly rigid and ultimately unrealistic representation of the principle of conferral, according to which even the legitimate exercise of an expressly conferred supranational power – in this case, the promotion of social dialogue – could be viewed as a threat to national competence. In truth – and this is the second point for reflection that can only be briefly outlined here – despite institutional efforts to confine the Union's action

[62] See the details in G. Orlandini and A. Allamprese, *cit.* at footnote n. 60. Concerning the role of Art. 4 of the European Social Charter in Spain, see C. Molina Navarrete, *El suelo salarial no solo debe ser mínimo, sino adecuado para una vida digna: ¿qué dice el TJUE al respecto?*, *Briefs AEDTSS*, n. 110, 2025.

within the limits of a narrowly construed principle of conferral[63], the phenomenon long described as *competence creep*[64], appears to be a structurally inevitable outcome of the integration process, which, in this as in other instances, has often found a sort of tacit legitimisation in the case law of the Court of Justice. The "good news", in this context, is that such a process of progressive expansion of Union competences may manifest itself not only at the level of negative integration driven by economic freedoms but also – as this case ultimately demonstrates – at the level of positive integration aimed at strengthening social rights.

(c) EU social policy and EU politics – Finally, the judicial outcome of the complex and contentious history of the Directive on adequate minimum wages can be evaluated from a broader perspective that transcends a legal analysis of its limited content, to encompass the Union's overall social policy, if not its politics *tout court.* From this viewpoint, the ruling has the merit of not hindering the tentative revival of the Union's social action, triggered by the Social Pillar and initiated by the previous Commission as one of its *flagship* initiatives*.* While neither the Directive nor the ruling constitutes a panacea, they at least do not represent a step backward, in contrast to what is currently happening in other areas of European social law under the guise of "simplification".

[63] From the Laeken Declaration on the Future of Europe in 2001 and the Treaty of Lisbon to the relevant ruling of the German Constitutional Court, the issue of *Kompetenz-Kompetenz* accompanied the birth of the Union in the first decade of the century.
[64] P. Craig, *The ECJ and ultra vires action: A conceptual analysis,* 48 2 (2011) *Common Market Law Review* 395.