The 'Italian Way' to the Minimum Wage. Time for a Change?

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Abstract

The Italian legal system is characterized by a unique way of ensuring minimum wage to employees, referred to as the 'Italian way' to the minimum wage. In the absence of a statutory minimum wage and collective agreements with universal coverage, it has fallen to the judge, through an original interpretative operation, to guarantee employees the minimum wage, identified in the minimums set by the collective agreements for the sector in which the employer operates. However, this operation has begun to show significant signs of failure in achieving its goal. This contribution aims to highlight the usefulness of legislative intervention on minimums, in light of scientific and political debate. Finally, it considers the possible impact that the implementation of Directive (EU) 2022/2041 could have in terms of moving towards the introduction of a legally guaranteed minimum wage.

I. Introduction

The Italian legal system has always been characterized by a reluctance to adopt legal mechanisms for setting minimum wages. When the issue first arose at the international level, despite Italy formally ratifying International Labour Organization Convention no 26 in 1928, the ideologists of the fascist regime hastened to assert that collective bargaining, being universally applicable, had long been ensuring workers a fair wage. Even though the reality was a bit different.[1]

With the advent of the Republican Constitution, the situation did not change. Art 36 provided for the recognition of the right of every employee

> 'to a remuneration proportional to the quantity and quality of their work and in any case sufficient to ensure for themselves and their families a free and dignified existence'.

Therefore, a right of workers to a minimum wage was clearly affirmed, to be quantified in accordance with the guiding principles of 'sufficiency' and 'proportionality.' The concrete determination was delegated, in the constitutional

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[1] In this regard, refer to the comprehensive historical reconstruction by M. Roccella, *I salari* (Bologna: il Mulino, 1986), 47-49.

design, to collective bargaining, which was intended to have, according to Art 39 of the Constitution, universal coverage. This does not preclude, as we will see later, intervention by the legislature on minimum wages.

Despite the clear intention of the constitutional legislator, however, neither an extension mechanism for extending collective agreements coverage nor legislation on minimum wages has ever been approved. Judges have thus taken it upon themselves, starting from the 1950s, to ensure minimum remuneration for workers where they were not already protected by the application of a collective agreement. The reasoning developed by the judges began with the recognition of a right to a fair minimum wage directly derived from Art 36 of the Constitution.[2] It has been identified by the judges, with few exceptions, by taking as reference the minimums provided for by collective agreements for the sector to which the activity carried out by the employer belongs. In this way, the judges have practically managed to attempt to generalize the guarantee of minimum wages provided for by the collective agreement, covering situations where a collective agreement was not applied by the employer. An undoubtedly peculiar way of guaranteeing the minimum wage, so much so that it has been called the 'Italian way' to the minimum wage.

II. The Limits of the 'Italian Way' to the Minimum Wage

While the judges have effectively managed to ensure a generalization of the minimum wages provided by collective bargaining, their intervention has begun to show increasingly significant limitations. The main issue has probably been the emergence of so-called 'pirate' collective bargaining, which has resulted in sectorial collective agreements signed by poorly representative trade unions, often with the aim of providing employers with lower wages compared to *mainstream* collective agreements. It should be noted that the National Council for Economics and Labour (CNEL) recently identified 946 sectorial collective agreements in the private sector, of which only one-fifth were signed by the most representative unions. Nonetheless, these agreements still cover the majority of workers.[3]

[2] Among the many decisions, see Corte di Cassazione 12 May 1951 no 1184, *Rivista Giuridica del Lavoro*, II, 253 (1951), and lately Corte di Cassazione, Sezioni Unite, 29 January 2001 no 38, *Orientamenti di Giurisprudenza del Lavoro*, 443 (2001); Corte di Cassazione 5 May 2004 no 8565, *Archivio Civile*, 1157 (2004). La The prevailing legal scholarship similarly recognized an inalienable right to a minimum wage deriving directly from Art 36 of the Constitution. See for example, A. Cessari, 'L'invalidità del contratto di lavoro per violazione dell'art. 36 della Costituzione' *Il Diritto del Lavoro*, II, 197 (1951); G. Giugni 'Nullità dell'accordo tra datore e prestatore di lavoro per una retribuzione inadeguata alle mansioni esplicate' *Il Foro Padano*,I, 1009 (1951); S. Pugliatti 'Ancora sulla minima retribuzione sufficiente ai lavoratori' *Rivista Giuridica del Lavoro*, II, 175 (1951); U. Natoli 'Retribuzione sufficiente e autonomia sindacale' *Rivista Giuridica del Lavoro*, I, 255 (1951); R. Nicolò 'L'art. 36 della Costituzione e i contratti individuali di lavoro' *Rivista Giuridica del Lavoro*, II, 5 (1952); R. Scognamiglio, 'Sull'applicabilità dell'art. 36 della Costituzione in tema di retribuzione del lavoratore' *Il Foro Civile*, 352 (1951).

[3] CNEL, 'XXIV Rapporto sul Mercato del Lavoro e Contrattazione Collettiva 2022', available at

Although the application of 'pirate' agreements is not widespread, it has created difficulties for the judicial mechanism ensuring minimum wage guarantees. When an employment relationship is governed by a collective agreement that does not recognize decent wages, falling below those stipulated by the collective agreement signed by the most representative unions for the same sector, it becomes challenging for the judge to disapply the first agreement in favor of recognizing the wages prescribed by the second. The risk involved is, in fact, that of conflicting with the principle of trade union freedom of association, which nevertheless also protects smaller unions and the collective agreements they produce, as long as they do not take on the characteristics of 'yellow' unions.

A recent ruling by the Court of Cassation[4] appears to have overcome the issue, recognizing that although the judge must generally respect the choices made by collective bargaining regarding wages, it is also true that there is a limit in the Constitution beyond which wages cannot fall. Therefore, according to the Cassation, the judge is empowered to question the wage choices made by collective bargaining when they are so unfair as to conflict with the parameters of proportionality and sufficiency of wages dictated by Art 36 of the Constitution. In these cases, the judge may determine the wage by referring to the remuneration established in other collective agreements in similar sectors or even, if necessary, to economic and statistical indicators, as suggested by EU Directive 2022/2041 on adequate minimum wages in the European Union, Art 5, para 2.

Despite this new direction expressed by the Court of Cassation, seeming to allow the judge the discretion to question and therefore revise upward the wages provided by poorly remunerative collective agreements, doubts remain about a possible infringement on union freedom that such a judge's choice could entail. And it remains firm that to claim the right to adequate remuneration, the individual must expose themselves and bear the costs of legal action. The union could certainly offer to organize and manage the litigation and cover the related expenses. However, this opens up a second issue. In recent times, the inability of collective bargaining to reach marginalized and atypical areas of work has become evident.[5] And this is probably the area where low wages are most often an issue. An area where even the union often fails to reach. This situation leaves the individual worker, precariously employed and therefore potentially exposed to employer coercion, with the burden of individually asserting in court their right to constitutionally adequate remuneration. It is not a surprise that in practice this happens very rarely.

More generally, the jurisprudential guarantee of minimums has not managed to cope with the phenomenon of low incomes that has long affected economically

https://www.cnel.it/Documenti/Rapporti.

[4] Corte di Cassazione 2 October 2023 no 27711, available at https://tinyurl.com/27ssz782 (last visited 30 September 2024).

[5] See T. Treu, 'Contratto di lavoro e corrispettività, Contratto di lavoro e corrispettività', in F. Carinci and M. Persiani eds, *Trattato di diritto del lavoro* (Padova: CEDAM, 2013), IV, 1364.

and operationally dependent self-employed workers.[6] In this area, there is a traditional resistance from the judiciary,[7] supported by a dated ruling of the Constitutional Court,[8] to consider constitutional principles regarding adequate remuneration beyond subordinate work. In this field, only the legislator has recently attempted to address the issue concerning riders employed though a digital platform. Legge no 128 of 2019 has recognized the right to a minimum compensation, even for those classified as self-employed, to be established in *ad hoc* collective agreements negotiated by the most representative trade unions and employers' organizations; or, in their absence, deducible from national collective agreements in similar or equivalent sectors signed by the most representative trade unions and employers' organizations at the national level.

Lastly, but no less important, is the issue concerning the effectiveness of collective wage bargaining. As mentioned earlier, data confirms a consistent and uninterrupted growth in working poverty in Italy since 2008,[9] which has affected not only precarious and atypical jobs but also standard employment. This demonstrates an objective difficulty for collective bargaining to support wage dynamics.

III. Legitimacy and Opportunity of Legislation on Minimum Wages

There are increasingly voices in scientific and political discourse advocating for the introduction of a statutory minimum wage.[10] A solution that would fit well within the framework outlined by Art 36 of the Constitution. In this regard, the Constitutional Court has been clear since a landmark ruling of 1962, case no 106, in emphasizing the absence of a reservation in favor of unions for the regulation of employment relations.[11] If it is indeed true that collective bargaining plays a central role as a tool for determining wage standards within the framework outlined

[6] It has been certified by the National Institution for Statistics ISTAT, 'Condizioni di vita, reddito e carico fiscale delle famiglie' (17 dicembre 2017), available at https://tinyurl.com/chdwyrdv (last visited 30 September 2024), according to which the average income from self-employment has consistently been below the average income from wage employment since 2003, with a gap that has been widening since 2009.

[7] Recently Corte di Cassazione 7 December 2017 no 29437, *Repertorio Foro Italiano* 2017, Lavoro (rapporto di) no 1038.

[8] Corte Costituzionale 7 July 1964 no 75, available at https://www.cortecostituzionale.it.

[9] ISTAT, 'Le statistiche dell'istat sulla povertà - anno 2022', available at https://tinyurl.com/28kydye2 (last visited 30 September 2024).

[10] In this regard see M. Delfino, *Salario legale, contrattazione collettiva e concorrenza* (Napoli: Editoriale Scientifica, 2019); R. Fabozzi, *Il salario minimo legale. Tra la dimensione europea e le compatibilità ordinamentali* (Bari: Cacucci, 2020); E. Menegatti, *Il salario minimo legale. Aspettative e prospettive* (Torino: Giappichelli, 2017); P. Pascucci, *Giusta retribuzione e contratti di lavoro. Verso un salario minimo legale?* (Milano: Franco Angeli, 2018).

[11] Corte Costituzionale 11 December 1962 no 106, available at www.cortecostituzionale.it, followed by many similar decisions, among which Corte Costituzionale 28 June 1963 no 120; Corte Costituzionale 16 July 1968 no 101; Corte Costituzionale 16 June 1970 no 99.

by the Constituent Assembly,[12] it is equally true that Art 36 of the Constitution primarily addresses the legislature, binding it to implement a socio-political direction aimed at ensuring the sufficiency of remuneration.[13] This is even more true considering the lack of universally applicable collective agreements. This situation increases the legislature's responsibility to define, possibly even correcting the choices of collective bargaining, some basic conditions of the worker's treatment, wages especially.[14]

Statutory law and collective bargaining are both therefore empowered to determine proportionate and sufficient wages. Regarding the internal division of their respective competencies, according to the Constitutional Court idea, supported by the most authoritative doctrine,[15] collective bargaining remains the main player in determining wages,[16] with adjustments that the legislature decides to introduce for the protection of the worker and/or to pursue the general interest, without, however, questioning the role of collective bargaining in autonomously determining the overall remuneration package for the worker.[17]

[12] T. Treu, n 5 above, 1362.

[13] G. Perone, 'Retribuzione' E*nciclopedia del diritto* (Milano: Giuffré, 1989), vol XL, 34. The attribution by the Constitution of a central role to statutory law in determining minimum wages is also pointed out by M. Grandi, 'Prospettive in Italia per una legislazione sui minimi' *Politica Sindacale*, 1962, 111, who insists on the duty of the legislator to protect the right of the citizen, as a worker, to have adequate remuneration. In the same vein, the aforementioned ruling of the Corte Costituzionale 15 November 1962 no 106, expressed how Arts 3, 35, 36, 37 of the Constitution, in order to protect the personal dignity of the worker and work in any form and by anyone performed, and to ensure the worker a sufficient remuneration to guarantee a free and dignified life, not only allow, but also impose on the legislator to enact norms that, directly or indirectly, impact the field of labor relations.

[14] T. Treu, 'Art. 36', in G. Branca ed, *Commentario alla Costituzione. Rapporti Economici*, (Bologna-Roma: Zanichelli, 1979), I, 76-75, who highlights how such function is also confirmed by paras 2 and 3 of Art 36 of the Constitution, where legislative interventions are provided for in matters of primary competence of collective bargaining, such as the maximum duration of the working day and the right to paid annual leave for the worker.

[15] M. D'Antona, 'Appunti sulle fonti di determinazione della retribuzione' *Rivista Giuridica del Lavoro*, I, 7 (1986); L. Mengoni, 'Legge e autonomia collettiva' *Massimario di Giurisprudenza del Lavoro*, 693-695 (1980); M. Dell'Olio, 'Emergenza e costituzionalità (le sentenze sulla scala mobile e il "dopo")' *Giornale di Diritto del Lavoro e delle Relazioni Industriali*, 1-3 (1981). E. Ghera, 'Retribuzione, professionalità e costo del lavoro' *Giornale di Diritto del Lavoro e delle Relazioni Industriali*, 431 (1981); P. Tosi, 'La retribuzione nel diritto del lavoro dell'emergenza' *Giornale di Diritto del Lavoro e delle Relazioni Industriali*, 532-535 (1979).

[16] P. Ichino, 'La nozione di "giusta retribuzione" nell'articolo 36 della Costituzione' *Rivista Italiana di Diritto del Lavoro*, I, 746 (2010). Similarly, T. Treu, n 14 above, 98, who highlights in this regard the difference in content between legislation on minimums and the instruments of universal extension of collective agreements; the latter are precisely entrusted with wage differentials in relation to the different jobs performed, while statutory law addresses the universalistic aim to counteract low wages.

[17] See Corte Costituzionale 7 February 1984 no 34, available at www.cortecostituzionale.it, according to which what the legislator surely cannot do is to cancel or contradict, at will, the freedom of trade union choices and their contractual outcomes, unless this is instrumental to protecting the personal dignity of the worker and work, in any form and by anyone performed, and to guarantee the worker a sufficient remuneration to ensure a free and dignified life.

In other words, statutory law would be in charge of ensuring the adequacy of wages relative to the worker's living needs, guaranteeing a sufficient minimum. While collective bargaining would be responsible for ensuring its proportionality by negotiating wages above the statutory minimum, taking into account the characteristics of the job performed.[18]

Legislative intervention on minimum wages is therefore simply a matter of opportunity, weighing the costs and benefits. In this regard, there are several advantages that legislation on minimum wages would bring. Firstly, it would support wage dynamics, as the statutory minimum would push up the wages of the lowest-paid workers. Furthermore, the guarantee of minimum wages could be extended beyond subordinate work to include all those workers who economically and operationally depend on a main client. Last but not least, the presence of a legal minimum wage would significantly limit wage dumping practices by pirate collective agreements.

Concerns about legislative intervention on minimum wages are not lacking as well. In particular, an argument put forward by the unions in all European countries where there is no legal minimum wage,[19] including Italy, is that they see a danger of undermining unions' bargaining action, resulting in a substantial impoverishment of those who earned above the statutory minimum.

More specifically, the reasoning, contextualized within the Italian legal system, starts from the idea that if the legislature were to establish a minimum wage, it would become the new mandatory reference for the judge's intervention, instead of the higher wage stipulated by collective agreements.[20] This could occur when a collective agreement is not applied or, according to the latest orientation of the Court of Cassation, when a so-called pirate collective agreement with inadequate remuneration is applied.

Sectoral bargaining would suddenly find itself emptied of what has been its main function up to now: determining non-negotiable minimum wages.[21] This would immediately affect the scope of application of the sectoral collective agreement, the (almost) universal application of which has largely been guaranteed by the employer's inability to deviate from the compliance with the minimum wage rates, as otherwise the judge could intervene by imposing the application of the minimums set in the collective agreements. In other words, the employer would only need

[18] This opinion is shared by L. Zoppoli, *La corrispettività nel contratto di lavoro* (Napoli: Jovene, 1991) 207-209; T. Treu, n 14 above, 76; F. Guidotti, 'La retribuzione', in L. Riva Sanseverino and G. Mazzoni eds, *Nuovo trattato diritto del lavoro* (Padova: CEDAM, 1971), II, 314; G. Zilio Grandi, *La retribuzione. Fonti struttura funzioni* (Napoli: Jovene, 1996), 32-34.

[19] L. Eldring and K. Alsos, 'European Minimum Wage: A nordic outlook', (2012), available at https://tinyurl.com/yz82dm8a (last visited 30 September 2024) and the update of the research by the same Authors, 'European Minimum Wage. A Nordic Outlook – an update', (2014), available at https://tinyurl.com/49txreep (last visited 30 September 2024).

[20] V. Bavaro, 'Il salario minimo legale fra Jobs Act e dottrina dell'austerità', *Quaderni di Rassegna Sindacale*, 4, 68 (2014).

[21] ibid 70-71.

to ensure compliance with the legal minimum wage to comply with the Constitution and its Art 36.[22] To counteract this phenomenon, the social partners should, in turn, try to negotiate lower wages closer to the legal minimum, in order to keep the collective agreement 'competitive.'[23]

The disruption caused by the minimum wage would then extend to involve the internal dynamics of collective wage negotiations under another aspect: the legal minimum rate would risk becoming a benchmark for the employer delegation, useful for containing union demands.[24] This situation would ultimately lead to damage to the image of the social partners, with an inevitable decline in the rate of union membership.

IV. Attempts at Legislation on Minimum Wages

Taking into account the advantages and concerns just outlined, there have been several attempts by policymakers to enact legislation on minimum wages in recent times. In particular, the bill that has garnered the most attention is the one proposed by the Five Star Movement in the previous legislature (Senate bill no 658 of 2018),[25] along with a recent draft law stemming from a joint proposal by opposition parties (House of Representatives bill no 1275 of 2023).[26]

Focusing on the latter proposal, as the former inevitably lapsed with the end of the previous legislative term, it is noteworthy how the proposal, similar to the previous one, emphasizes the role of collective bargaining in ensuring minimum wages. Employers are required to adhere to the minimums set by the collective agreements in force for the sector in which they operate, negotiated by the most representative national associations of employers and workers. In this way, concerns about a possible undermining of bargaining action are definitively dispelled by the primary role delegated to collective bargaining.

Additionally, the law establishes an unaidable statutory minimum wage applicable to all sectors, both private and public. Initially, the minimum would be set by the bill itself. It must then be periodically updated by a tripartite commission established by the law, consisting of representatives from relevant administrative bodies (in addition to the Ministry of Labour, the National Social Security Institute, the National Institute of Statistics, and the Labour Inspectorate)

[22] See A. Vallebona, 'Sul c.d. salario minimo garantito', *Massimario di Giurisprudenza del Lavoro*, 326 (2008); G. Ricci, 'La retribuzione costituzionalmente adeguata e il dibattito sul salario minimo' *Lavoro e Diritto*, 655 (2011) and P. Ichino, 'Minimum wage: perché non piace ai sindacati' (2014), available at https://tinyurl.com/2vazvpf7 (last visited 30 September 2024), though he is in favour of statutory minimums.

[23] V. Bavaro, '*Jobs Act* – Il salario minimo e le relazioni industriali' *Il diario del lavoro*, available at https://tinyurl.com/mrxxn29y (last visited 30 September 2024).

[24] V. Speziale, 'Il salario minimo legale' *WP CSDLE "Massimo D'Antona"*, 244, 4 (2015).

[25] The text is available at https://tinyurl.com/y53x6m45 (last visited 30 September 2024).

[26] The text is available at https://tinyurl.com/mrxkmayb (last visited 30 September 2024).

alongside representatives from the most representative social partners, employers, and unions, in equal numbers.

To address the issue of low wages beyond subordinate work, the guarantee of minimums is extended to commercial agents and representatives, as well as to relationships involving autonomous but continuous and coordinated collaboration with a principal. This category corresponds to quasi-subordinate workers, positioned halfway between employees and independent contractors. The law goes as far as to include non-entrepreneurial self-employed workers, including professionals. For all these workers, the minimum wage is analogous to that established by the collective agreements negotiated by the most representative national associations of employers and employees for comparable tasks performed by employees, always respecting the minimum set by law.

The framework of the bill appears effectively designed to address current difficulties in ensuring minimum wages without undermining the role of unions and collective bargaining, but rather enhancing it. The only aspect that appears problematic is related to identifying the collective agreement to be used as a reference point for adequate remuneration. Even though only one-fifth of the over 900 collective agreements in force in Italy are signed by the most representative unions, it could be challenging in many cases to accurately identify these contracts, considering the lack of criteria for measuring representativeness in Italy.

Anyway, it is worth mentioning that the proposal was effectively blocked by the government majority, which approved a completely different draft bill on November 28, 2023.[27] In this latter, there is no longer any trace of a minimum wage set by statutory law. The 'minimum overall economic treatment' to be guaranteed to all workers is that provided for in the most applied collective agreement with reference to the number of companies and employees within each category covered by that collective agreement. The bill, if approved by parliament, would put in the hands of the Government the approval of a legislative decree aimed at providing the detailed rules for the functioning of the mechanism identified by parliament. However, this would be a technically and politically complex instrument to implement,[28] which risks never seeing the light of day.

V. The Directive (EU) 2022/2041 on Adequate Minimum Wages…

In a scenario that, despite signs of activity, does not foresee short-term signs of overcoming the Italian approach to the minimum wage, the only short-term novelty may be represented by the implementation of Directive No 2022/2041,[29]

[27] The text is available at https://tinyurl.com/56vzt6c8 (last visited 30 September 2024).

[28] See E. Massagli, 'Il nuovo criterio della maggiore applicazione: prime considerazioni sulla delega al Governo in materia di salario equo' *Lavoro Diritti Europa*, 1 (2024).

[29] For a commentary of the Directive see L. Ratti et al eds, *The EU Directive on Adequate Minimum Wages, Context, Commentary and Trajectories* (Bloomsbury: London, 2024).

which is expected to be transposed by November 15, 2024. However, it is worth mentioning that its impact on the Italian legal system will necessarily be minimal. It is also worth noting that the Directive is currently threatened by the recourse for annulment filed by Denmark.[30]

The obligations included in the directive require, in summary,[31] the 21 member countries where a salary 'established by law or other binding legal provisions' exists to introduce clear and stable criteria for setting, updating, and evaluating the adequacy of the measure of the legal minimum wage, following their own national practices for determining the minimum and involving the social partners (Arts 5-8).[32] However, these provisions do not apply to Italy, nor to the other 5 European countries where wages are exclusively set by collective agreement (Austria, Cyprus, Denmark, Finland, Sweden). Evidently, the underlying choice is not to interfere with the methods and criteria for determining the minimums and therefore their measure, in order to respect the autonomy of the social partners.[33]

Instead, all European Union countries are requested in principle to intervene in support of so-called multi-employer collective bargaining (sectoral and intersectoral), aimed at indirectly supporting wage levels. Starting from the empirically proven fact of the close connection between high levels of coverage of collective bargaining and wage standards, the Commission aims to increase the former in order to improve the latter.[34] Member states are thus tasked with adopting measures that include at least the promotion of the ability of social partners to undertake 'constructive' wage negotiations at the sectoral or intersectoral level (Art 4.1). In countries where the coverage of collective bargaining is less than 80%, they are required to develop, by law, following consultation with social partners, or through a tripartite agreement, an action plan to provide a framework for promoting collective bargaining (Art 4.2).

Regarding the initiatives that states can or may undertake more concretely,

[30] Action brought on 18 January 2023 — Kingdom of Denmark v European Parliament and Council of the European Union (Case C-19/23).

[31] For a more in-depth analysis, it is allowed to refer to E. Menegatti, 'Much ado about little: The Commission proposal for a Directive on adequate wages' *Italian Labour Law e-Journal*, 14, 21-32 (2021).

[32] These criteria must include at least the four indicated in the directive: the purchasing power of legal minimum wages; the general level of gross wages and their distribution; the rate of growth of gross wages; the trend of labor productivity (Art 5.2). These are the 'classic' indicators used by economists in the study of wages, largely already considered by the member countries according to various combinations.

[33] The respect for collective autonomy and its choices is central to the framework of the directive, as also clarified by its preamble, in recital 16.

[34] As highlighted by S. Hayter and J. Visser, 'The application and extension of collective agreements: Enhancing the inclusiveness of labour protection', in Ead eds, *Collective Agreements: Extending Labour Protection* (Geneva: ILO, 2018), 26, following an extensive review of various collective bargaining systems, a higher coverage of collective bargaining, supported by sectoral bargaining, goes hand in hand with a reduction in the proportion of poorly paid jobs. More recently, the correlation is confirmed by an empirical study conducted by S. Marchal, 'An EU minimum wage target for adequate in-work incomes?' *European Journal of Social Security*, 22, 4, 452 (2020).

the directive does not add anything. The only measures mentioned in the proposal are, in the negative, those that member states are not obligated to adopt, namely the introduction of a legal minimum wage and mechanisms for extending the effectiveness of collective agreements *erga omnes*. These clarifications serve to reiterate, to avoid misunderstandings, that the directive does not intend to encroach upon the autonomy of member states and social partners in determining minimum wages. They also aim to maintain the Directive proposal balanced on the fragile legal bases provided by the treaties regarding wages.[35]

Furthermore, ensuring adequate minimums involves a series of provisions defined as 'horizontal.' Among these, noteworthy for the potential impact it seems destined to have on Italy, is the mechanism for monitoring and collecting data on the trends and coverage of minimum wages, to be communicated annually to the Commission and then to Parliament and the Council. This is an essential requirement for implementing the directive, as it allows for identifying necessary interventions on wages and collective bargaining. The monitoring should also enable European institutions to oversee the wage situation in member states, ultimately leading to integrated guidelines for growth and employment channeled through the European Semester.

For legal systems without a statutory minimum wage, the situations to be monitored essentially concern the coverage rate of collective bargaining and wage levels for uncovered workers. Only a reliable measurement of the coverage and effectiveness of collective bargaining in terms of wage adequacy will enable the operationalization of the provisions supporting collective bargaining as outlined above.

1. … And Its Potential Impact on the Italian Legal System

In the current situation of the absence of a statutory minimum wage but high coverage of collective bargaining, estimated to be close a bit 100% according to unofficial data from CNEL,[36] Italy is not currently required to transpose measures regarding wage adequacy or to introduce particular measures to support collective bargaining. In particular, there will be no need to implement measures to promote the development and strengthening of the capacity of social partners to engage in genuine and effective wage negotiations; a capacity which, looking at the past and present of Italian industrial relations, is not in question. It will also not be

[35] Art 153.5 of the Treaty on the Functioning of the European Union excludes from the broad competence of EU law in the field of labor law and social security precisely the issue of wages. On the meaning to be attributed to the exclusion of competence and its implications for the proposed directive under discussion, please refer to G. Di Federico, 'The Minimum Wages Directive Proposal and the External Limits of Art. 153 TFEU' *Italian Labour Law e-Journal*, 13(2), 107-111 (2020); A. Lo Faro, 'L'iniziativa della Commissione per il salario minimo europeo tra coraggio e temerarietà' *Lavoro e Diritto*, 3, 543 (2020).

[36] See CNEL, 'Documento relativo agli esiti della prima fase istruttoria tecnica sul lavoro poveroe il salario minimo' (2023), available at https://tinyurl.com/5jd4ww72 (last visited 30 September 2024).

necessary, in order to comply with the Directive, to introduce mechanisms to extend the effectiveness of collective bargaining or to establish a statutory minimum wage; obligations explicitly excluded by the Directive itself.

The Italian legal system appears to be already aligned with the horizontal provisions of the Directive, except for the monitoring system, which is practically absent in all member states of the Union. Establishing an official and reliable monitoring system for the coverage of collective bargaining and wage distribution will certainly be laborious, considering that failed attempts, except in the public sector, are now too numerous to count. In any case, this time, unless facing infringement proceedings, the result must be achieved. The establishment of the monitoring mechanism will not only help understand the exact coverage of collective bargaining but also comprehend the specific coverage of various collective agreements within the same sector. From here to the approval of a law on union representativeness, another historically incomplete process in the Italian legal system, the step should be short. Such a law, in turn, would pave the way for legislative intervention on the minimum wage that emphasizes, in the sense of the aforementioned proposed law, the economic treatment of contracts covering the majority of workers as generalized tariff minima.

However, we are in the realm of hypotheses, and the current government majority's aversion to a law on minimum wages does not make it as straightforward as it could be to arrive at both a law on representativeness and a minimum wage.