The EU's new minimum wage Directive: Implications for Austria?

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I. Introduction

On 28 October 2020, less than a year after announcing its commitment to addressing the challenges related to fair minimum wages, the European Commission published a proposal on a Directive on adequate minimum wages in the European Union.[1] The proposed Directive aims to establish a framework at Union level to ensure that minimum wages are set adequately in order to guarantee decent working and living conditions. It constitutes the peak of a political as well as

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[1] European Commission, Proposal for a Directive of the European Parliament and of the Council on adequate minimum wages in the European Union, COM/2020/682 final.

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academic debate that has lasted for decades.[2] This paper seeks to map out the Directive's potential impact and implications on Austrian labour law and the domestic wage setting regime. The following considerations – after a few general remarks necessary for an in-depth understanding– will therefore mainly concentrate on issues particularly relevant from an Austrian perspective.

II. Desirable policy shift but doubtful legal base?

Although the right to adequate and fair remuneration has already been protected at the level of international law for a fairly long time[3] and was subject to discussions on the EU level in the past as well, this is the first time that a proposal by the European Commission for a binding legal instrument of secondary law is on the table. Still, before the adoption of the Charter of Fundamental Rights of the European Union (CFREU) in 2000, discussions took place on whether "pay" should be covered by Art 31 CFREU, which now enshrines the right to "*fair and just working conditions*". Recently, "*the right to fair wages that provide for a decent standard of living*" has been laid down in Principle 6 of the European Pillar of Social Rights (EPSR), which was solemnly proclaimed in 2017. The EPSR aims to anchor a strong social dimension in the future of the European Union[4] and has already provided a fresh impetus for a number of legislative and non-legislative initiatives – including the proposal of a Directive on adequate minimum wages.[5] Moreover, the EU's notable policy shift towards a more social Europe has been emphasized through the Social Commitment signed at the Social Summit in Porto in May 2021, reaffirming the willingness of the EU institutions to implement the EPSR.[6]

However, as the EPSR is not legally binding and cannot expand the Union's regulatory competence, one crucial question remains: Can the proposed Directive actually be adopted on the chosen legal basis of Art 153(2) in conjunction with Art 153(1)(b) TFEU? Taking recourse to Art 153(1)(b) TFEU, the shared competence of the Union and the Member States in the field of "working conditions", would in principle allow for a wide range of action. Yet, upon closer

[2] See Thorsten Schulten, 'Mindestlöhne und Mindestlohnregime im europäischen Vergleich', in Rudolf Mosler/Walter Pfeil (eds.) *Mindestlohn im Spannungsfeld zwischen Kollektivvertragsautonomie und staatlicher Sozialpolitik* (Vienna: ÖGB, 2016) 75-96, pp. 75 sqq.; Line Eldring/Kristin Alsos, 'European Minimum Wage: A Nordic Outlook', *Fafo-Report* 16, 2012.

[3] See e.g. Art 5 ESC, ILO Conventions 26, 99, 131, Art 7(a) ICESCR and Art 23(3) UDHR.

[4] See Statement of President Juncker on the Proclamation of the European Pillar of Social Rights, 17.11.2017, https://ec.europa.eu/commission/presscorner/detail/en/STATEMENT_17_4706 (27.11.2021).

[5] See most recently the proposal for a Directive to strengthen the application of the principle of equal pay for equal work or work of equal value between men and women through pay transparency and enforcement mechanisms, COM(2021) 93 final and the proposal for a Directive on improving working conditions in platform work, COM(2021) 762 final.

[6] See https://www.2021portugal.eu/en/porto-social-summit/porto-social-commitment (1.12.2021); Sacha Garben, 'The European Pillar of Social Rights: An Assessment of its Meaning and Significance', *Cambridge Yearbook of European Legal Studies*, 21 (2019) Cambridge Yearbook of European Legal Studies 101–127.

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examination, it emerges that the EU's competence in the field of minimum wages seems doubtful as Art 153(5) TFEU expressly excludes the issue of "pay"[7] from the Union's legislative competence in the in the social area. The Commission, though, has interpreted this limitation strictly and is convinced that the proposal fully respects the boundaries of the legal basis of the EU's social policy since the Directive – as stated in Recital 16 – neither aims to harmonize minimum wages across the Union nor to establish a uniform mechanism for setting them. Legal scholars as well as a number of Member States, however, have taken a more critical attitude, deeming the Directive as drafted to go beyond the EU's legislative power.[8]

In fact, the Court of Justice of the European Union (CJEU) has argued in its case law that "*the establishment of the level of the various constituent parts of the pay of a worker falls outside the competence of the European Union*". However, the Court has also reasoned that the provision of Art 153(5) TFEU does not encompass all legislative measures "*involving any sort of link with pay*".[9] Being an exception to a rule, the provision of Art 153(5) TFEU must be interpreted narrowly as it would otherwise hollow out the EU's competence on social policy. Thus, various labour law Directives involve the matter of pay, including it in the employment conditions for which equal treatment must be assured (regarding fixed-term, part-time and temporary agency workers) and stipulating that every worker is entitled to paid annual leave (Working Time Directive). The Court has held this to be in line with Art 153(5) TFEU.[10]

Seen in this light – as the proposal for the Directive on adequate minimum wages only holds criteria for the adequacy of statutory minimum wages (Art 5) – it appears that the Commission has chosen a valid legal base. In view of the doubts expressed, however, some scholars have suggested Art 175 TFEU on economic, social and territorial cohesion as a more suitable legal basis. This would allow for a Directive on minimum wages rich in content but would avoid the

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[7] See other language versions e.g. German: „Arbeitsentgelt"; French: „rémunérations"; Spanish: „remuneraciones"; Swedish: „löneförhållanden".

[8] In contrast, the EU Council's legal service in its opinion has confirmed that the Directive is drafted on the correct legal basis; see 2020/0310(COD) and Susanne Wixforth/Lukas Hochscheidt, 'Minimum-wages directive: It's legal', Social Europe 8.4.2021, https://socialeurope.eu/minimum-wages-directive-its-legal (22.09.2022); for a critical analysis of the legal basis also see among many Martin Franzen, 'Europäischer Regelungsrahmen für Mindestlöhne?' (2021) EuZA 1-2, p. 1; Adam Sagan/Stefan Witschen/Christopher Schneider, 'Angemessene Mindestlöhne in der EU' (2021) ZESAR 103-111, p. 103; Luca Ratti, 'The proposal for a Directive on Adequate Minimum Wages in the EU', 82 (2021) EU Law Live Weekend Edition 7-15; Erik Sjödin, 'European Minimum Wage: A Swedish perspective on EU's competence in social policy in the wake of the proposed Directive on adequate minimum wages in the EU'4 (2022) ELLJ 273-291.

[9] CJEU C-395/08, *Bruno and Others*, ECLI:EU:C:2010:329, para 39; *Impact*, C-268/06, ECLI:EU:C:2008:223, para 124, also see Opinion of GA *Bot*, C-501/12, *Specht*, ECLI:EU:C:2013:779, para 45 sqq.

[10] CJEU C-307/05, *Del Cerro Alonso*, ECLI:EU:C:2007:509, para 42; C- 395/08, *Bruno*, ECLI:EU:C:2010:329, Rn. 38; Art 5 of Directive 2008/104/EC; also see Sacha Garben, 'Art 153 TFEU', in Manuel Kellerbauer/Marcus Klamert/Jonathan Tomkin (eds.), *The EU Treaties and the Charter of Fundamental Rights: A Commentary* (Oxford: Oxford University Press, 2019).

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tightrope act with respect to Art 153(5) TFEU.[11] In any case, it remains to been seen how the CJEU will eventually assess the Directive's legality within the framework of the EU's current constitutional architecture.

The choice to rely on Art 153(1)(b) TFEU, nonetheless, is closely linked to the Directive's objectives. By establishing a framework for adequate minimum wage levels and access to minimum wage protection, the Directive's key concern is to reduce in-work poverty and wage inequality. Also, the Commission takes the view that having access to a minimum wage guaranteeing a decent standard of living is a pivotal element of adequate working conditions. Minimum wage protection, moreover, benefits both workers and businesses in the Union as it improves the fairness of the EU labour market. Explicit reference is also made to gender equality since more women than men earn wages at or around the minimum wage.[12]

Against this background, the design of the proposal aims to consider Member States' idiosyncrasies since national minimum wage systems differ significantly. It expressly respects national competences, social partners' autonomy as well as freedom of contract. Even though the Directive as drafted promotes collective bargaining on wages in all Member States (Art 4), it pursues a twin-track approach: Whereas general, horizontal and final provisions apply to all 27 Member States, four additional ones are only relevant for those 21 jurisdictions with a statutory minimum wage.[13] This will be discussed in more detail in Ch. IV.

III. Austria – "frontrunner" in collective bargaining coverage

Whereas the majority of the Member States has statutory minimum wages, Austria finds itself among those six that exclusively rely upon collectively agreed minimum wages. Austria's labour legislation to a great extent is devoted to self-regulation and social partner autonomy,[14] which has also been enshrined in constitutional law.[15] In contrast to many other Member States where the share of workers covered by collective bargaining agreements has been declining in recent years – Germany for instance even introduced a statutory national minimum wage in 2015 – numbers

[11] Ane Aranguiz/Sacha Garben, 'Confronting the Competence Conundrum of an EU Directive on Minimum Wages: In Search of a Legal Basis', CEPOB Policy Brief 9/19.

[12] See Preamble and Explanatory Memorandum, COM(2020) 682 final, 2 sqq.

[13] See Art 5-8 on adequacy, variations and deductions, involvement of social partners, effective access of workers to statutory minimum wages.

[14] See Michaela Windisch-Graetz, '*Arbeitsrecht II*, 11th edn. (Vienna: New Academic Press, 2020) p. 83. In the private sector only special forms of remuneration are set by legal provisions, for instance severance pay or overtime pay, calculation is usually based on the actual wages that have to respect collective bargaining agreements.

[15] Cf. Art 120a Federal Constitution Act (Bundes-Verfassungsgesetz, B-VG).

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in Austria have been consistently high.[16] Currently, a collective bargaining coverage rate of approximately 98% can be assumed.[17]

The reasons for Austria's high coverage rates are mainly rooted in the system enshrined in the Labour Constitution Act of 1974 (*Arbeitsverfassungsgesetz*, ArbVG),[18] whose foundations were laid in the second half of the 19th century.[19] Austrian legislation essentially follows a two-tier system: On the one hand, the right to bargain collectively is conferred to statutory bodies with mandatory membership representing the interests of employers and employees. These are primarily the Chambers of Labour (*Arbeiterkammern*) for employees and the Economic Chambers (*Wirtschaftskammern*) on the employers' side.[20] In fact, the registration of a business automatically leads to mandatory membership to the Economic Chambers.[21] However, there are exceptions to this general rule, which cause gaps in collective bargaining coverage.[22]

On the other hand, Austrian labour law also confers the right to bargain collectively to voluntary organizations of employers and employees.[23] In practice, collective agreements are mainly concluded by affiliated trade unions of the Austrian Trade Union Federation (*Österreichischer Gewerkschaftsbund*) on the employees' side and by the Economic Chambers, respectively its sectoral and regional organizations, on the employers' side.

The organizational structure alongside with the statutory *erga omnes effect* (*Außenseiterwirkung*), which basically stipulates that collective agreements also apply to workers who do not belong to the concluding employees' organization but whose employer is a member of the relevant bargaining party, ensures that the vast majority of employment relationships falls under the scope of a collective agreement.[24] Based on these principles, collective bargaining for the private sector

[16] See Elisabeth Brameshuber, 'The importance of sectoral collective bargaining in Austria', in Sylvaine Laulom et al (eds.), *Collective Bargaining Developments in Times of Crisis* (Kluwer Law International, 2017) 89-104.

[17] ILOSTAT, 2016, https://ilostat.ilo.org/data/ (10.12.2021). This includes collective agreements, extension mechanisms and workers of the public sector.

[18] See Ulrich Runggaldier in Theodor Tomandl/Martin Risak (eds.), '*Arbeitsverfassungsgesetz*', 1st supplement, Vor § 1 – Einleitung; Nora Melzer-Azodanloo, '*Labour law in Austria*', 2nd edn. (Alphen aan den Rijn: Kluwer Law International, 2017) margin number 75 et sqq.

[19] Elias Felten/Rudolf Mosler, '100 Jahre Kollektivvertragsrecht' (2020) DRdA, 91-103, p. 91.

[20] There are chambers for agriculture and chambers for liberal professions too.

[21] See section 2 Economic Chambers Act (WirtschaftskammerG).

[22] See Ch. IV D of this paper.

[23] See section 4(2) Labour Constitution Act.

[24] See section 12 Labour Constitution Act. As the system only exceptionally allows for company-level agreements, the trade unions essentially negotiate on behalf of the entire workforce within an industry, meaning that effects on employment throughout the whole sector must be taken into account. Hence, economically strong companies often pay wages significantly above the collectively agreed level.

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with few exceptions takes place at sectoral level[25] but is strongly coordinated across the economy. Accordingly, employment relationships in Austria at present are governed by 859 collective agreements, among which the world's first collective agreements for employed bicycle couriers and food suppliers or for professional footballers can be found.[26]

IV. The Directive's potential impact and implications on Austria

A. Introductory remarks

In Austria, given that "social partnership"[27] constitutes a distinctive feature of the industrial relations system and the political decision-making process, the Commission's initiative has led to mixed reactions and diverging political opinions. Although, at first glance, it may be assumed that implementing the Directive will not cause any significant changes in Austrian legislation (as demonstrated below), various stakeholders have expressed concerns regarding the potential restriction of social partners' autonomy.[28] Trade unions, by contrast, have very much welcomed the proposal, labelling it "*a great opportunity with still much potential for improvement*".[29] Opinions among the coalition partners within the Federal Government, as expected, strongly diverge. While the conservative Austrian People's Party has adopted a critical attitude towards the proposal, the Green party has spoken up in favour of the EU's initiative.[30]

Leaving aside political viewpoints, in the following section selected provisions of the draft Directive will be debated briefly and analyzed against the background of Austrian labour law.

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[25] Leaving aside specific statutory provisions for companies of the former public sector, corporate bodies under public law and certain (registered) societies of major importance may conclude collective agreements too.

[26] See https://www.kollektivvertrag.at/kv/fahrradboten-arb/fahrradboten-rahmen/497359?term=fahrrad (19.9.2022); https://www.kollektivvertrag.at/kv/fussball-bundesliga-oesterreich-arb-ang/fussball-bundesliga-oesterreich-rahmen/240200?term=bundesliga (27.1.2022); Thomas Dullinger/Sophie Schwertner, 'Der Kollektivvertrag der Österreichischen Fußball-Bundesliga'(2019) SpuRt 156-161, p. 156.

[27] The term "social partnership" (*Sozialpartnerschaft*) refers to the cooperation of stakeholder organisations for employers and employees (in particular the Chambers of Labour, the Economic Chambers and the Austrian Trade Union Federation) with each other and the government.

[28] See for instance the Statement of the Vorarlberg State Parliament (72/SLT-BR/2020, Stellungnahme des Landtages Vorarlberg).

[29] See https://www.oegb.at/themen/gewerkschaften-weltweit/europabuero-und-eu/zaehes-ringen-um-faire-loehne-in-der-eu (14.11.2021).

[30] See Press Service of the Parliamentary Administration, '*Joint Letter from Member States to the Presidency and former Presidency of the Council of the European Union regarding a Directive on adequate minimum wages in the European Union*' (50876/EU, 27. GP); OTS0197, 4.6.2021. In July 2022, however, the Federal Minister for Labour, Martin Kocher, described the Directive as a "good compromise"; see https://orf.at/stories/3271508/ (19.9.2022).

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B. Promotion of collective bargaining

Social partner negotiations on wages play a pivotal role in ensuring adequate minimum wages. Yet, as already mentioned, collective bargaining coverage rates in the EU have been declining in recent years[31]. To this effect, Art 4 of the proposal calls on Member States to promote collective bargaining and, where coverage is less than 80%[32], to establish an appropriate framework and to work out an action plan. Among the countries without nationwide statutory minimum wages, only Cyprus has a coverage rate of less than 80%.[33] Austria's coverage rates by far exceed the thresholds required and now stand at about 98%. Germany, in comparison, despite having a statutory minimum wage, would have to take measures as its coverage rate currently stands at around 44%.[34] It should be pointed out, nonetheless, that the rather vague provisions of Art 4 of the draft Directive lack any practical tool, leaving the question of how promotion is to be carried out at the discretion of the Member States.

Explicit standards are provided only with respect to the performance of public procurement and concession contracts. In apparent accordance with existing EU legislation and the CJEU's recent rulings, Art 9 obliges Member States to make sure that economic operators respect minimum wages.[35] This confirms the EU's commitment to fair public procurement rules as public bodies in the EU spend around 2 trillion euros per year on the purchase of goods and services.[36] As regards Austria, public procurement law already ensures that the contracting authority provides for compliance with national labour and social legislation including relevant collective agreements.[37] Also, besides the area of public procurement law, promotion of collective bargaining eventually could be achieved through extension mechanisms, action against union-busting, protection of trade union rights or measures increasing the representativeness of the bargaining parties.

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[31] See Esther Lynch, Fair wages are key to Europe's recovery, Social Europe, 20.11.2020, https://socialeurope.eu/fair-wages-are-key-to-europes-recovery (22.09.2022).

[32] The amendments proposed by the EU Parliament in November 2021 have raised this threshold from 70% to 80%; see European Parliament, Amendment 59 to Art 4(2), https://www.europarl.europa.eu/doceo/document/A-9-2021-0325_EN.html#top (7.12.2021).

[33] See ILOSTAT, https://www.ilo.org/shinyapps/bulkexplorer12/?lang=en&segment=indicator&id=ILR_CBCT_NOC_RT_A (29.11.2021). Note, however, that Cyprus is expected to introduce a minimum national minimum wage; see https://www.financialmirror.com/2021/12/29/national-minimum-wage-above-e924/ (30.1.2022).

[34] See https://www.destatis.de/DE/Themen/Arbeit/Arbeitsmarkt/Qualitaet-Arbeit/Dimension-5/tarifbindung-arbeitnehmer.html (1.12.2021).

[35] CJEU C-115/14, *RegioPost*, ECLI:EU:C:2015:760; also see Recital 24.

[36] See https://ec.europa.eu/growth/single-market/public-procurement_en (29.11.2021).

[37] See section 93 Federal Public Procurement Act (BundesvergabeG 2018).

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C. Transparency, remedies and penalties

The proposed Directive seeks to create transparency through monitoring, data collection and an annual reporting system; moreover it aims to enhance workers' access to minimum wage protection by putting necessary information at worker's disposal (Art 10). Its key strength, however, lies in granting effective judicial protection as minimum wage legislation can only be a useful tool if properly enforced. For this purpose, Art 11 in line with Art 47 CFREU and Principle 7 of the EPSR obliges Member States to ensure that adequate procedures are available to workers and their representatives in the case of infringements of their rights, including effective and impartial dispute resolution, the right to redress, and adequate compensation. In a similar vein, Art 12 requires Member States to provide for effective, proportionate and dissuasive penalties for breaches of national provisions establishing minimum wage protection. Austrian labour law ensures compliance with these requirements on different levels as exemplified below.

On the one hand, under the Act to Combat Wage and Social Dumping (*Lohn- und Sozialdumping-Bekämpfungsgesetz*, LSD-BG) underpayment constitutes an administrative offence.[38] In this regard, it should be noted that the Act and in particular its sanctions regime was recently amended due to a ruling by the CJEU (*Maksimovic and Others*, September 2019). The Court had found that the Austrian penalty regime – at least in the context of the posting of workers and regarding the violation of formal obligations – was contrary to the Freedom to Provide Services (Art 56 TFEU) as it may lead to disproportionate outcomes.[39] The amended version of the LSD-BG now provides for a new penalty framework with maximum fines that correspond to the ceiling in the CJEU judgment and has removed the minimum fine as well as the cumulative principle (fine per employee concerned).

On the other hand, leaving aside administrative law, Austrian labour legislation also by other means ensures that workers have access to effective, impartial dispute resolution and legal remedies in the case of violations of their rights regarding remuneration. Most importantly, workers are entitled to sue before a labour court for outstanding remuneration, regardless whether the claim arises from the law, an individual contract or a collective agreement.[40] Furthermore, they are protected against retaliation as a dismissal may be contested before the court if it was declared due to the assertion of remuneration claims by the employee.[41] Ultimately,

[38] See section 29 in conjunction with section 3 (1) Act to Combat Wage and Social Dumping 2016 (LSD-BG).

[39] See BGBl I 2021/174; CJEU C-64/18, *Maksimovic and Others*, ECLI:EU:C:2019:723.

[40] Workers' right to timely payment is secured through considerably higher default interest, currently amounting to 8,58 % p.a; see section 49a Labour and Social Security Procedure Act (Arbeits- und Sozialgerichtsgesetz).

[41] If an establishment with a works council is concerned see section 105 (3) Z 1 lit i Labour Constitution Act, otherwise barriers arise through the general principle of immorality; see Franz Schrank 'Section 105 ArbVG', in Theodor Tomandl/Martin Risak (eds.), *Arbeitsverfassungsgesetz*, 9th supplement (Vienna: Verlag Österreich, 2019) margin

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workers' financial interests are protected since unlawful underpayment may constitute a ground for constructive dismissal, i.e. the resignation from the employment contract by the employee with immediate effect.[42] In this respect, Austrian labour law also provides for the remedy of "compensation for notice", which originates from the law of damages and shall compensate the worker for damages caused by premature termination of their contract.[43]

D. Closing gaps in collective bargaining coverage

The key issue for Austrian labour law, however, is whether the Directive, if carried into effect, will impose an obligation on the legislator to close the gaps in collective bargaining coverage. Currently, about 2% of workers in Austria are not covered by any collective agreement or substitute instrument.[44] This is due to either the lack of a competent statutory representation body on the employers' side (see Ch. III) or the fact that collective agreements have been concluded for only some federal states, certain professional groups within an industry or specific categories of workers.[45]

Yet, legal provisions that exclude selected categories of workers from minimum wage protection appear particularly problematic in this context. For instance, the Postal Services Structure Act (*Poststrukturgesetz*, PTSG) determines that the relevant collective agreement shall not apply to holiday replacement staff on fixed-term contracts up to twelve weeks.[46] Since Art 2 of the proposed Directive refers not only to national labour law but also to the CJEU's case law, these workers fall under the proposed Directive's personal scope.[47] However, explicit rules regarding such limitations are provided only in respect to statutory minimum wages.

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number 116; Barbara Trost 'Section 105 ArbVG', in Rudolf Strasser/Peter Jabornegg/Reinhard Resch (eds.), *ArbVG* (Vienna: Manz, 2013) margin numbers 192, 221-227.

[42] See section 82 lit d Industrial Code 1859 (Gewerbeordnung 1859), section 26 Z 2 Employees Act (AngestelltenG).

[43] The worker shall receive remuneration that would have been paid during the period between the actual termination and the date of termination prescribed by law, collective agreement, works agreement or the employment contract. See section 29 Employees Act, section 1162b Civil Code (Allgemeines bürgerliches Gesetzbuch).

[44] See the analysis by sector in Stefan Bauer, *Die kollektivvertragliche Deckungsrate in Österreich* (Diploma Thesis, University of Vienna, 2010).

[45] Austrian labour law traditionally differentiates between blue- and white-collar staff. Whereas legal rules have been adjusted and only minor differences remain, in many industries there are still different collective bargaining agreements for the two groups.

[46] Collective Agreement for Postal Staff (Kollektivvertrag für Bedienstete der Österreichischen Post AG). See Thomas Dullinger, 'Zur Entlohnung von Urlaubsersatzkräften gem § 19 Abs 5 PTSG (2019) DRdA 448-451, p. 448.

[47] The CJEU has repeatedly ruled that persons undergoing vocational training or internships are to be qualified as "workers" under EU law as long as they "*pursue a genuine and effective activity*"; cf. CJEU C-10/05, *Mattern*, ECLI:EU:C:2006:220, para 21; CJEU C-229/14, *Balkaya*, ECLI:EU:C:2015:455, para 50.

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In large part, gaps in wage protection through collective agreements are filled by regulation of the competent authority ("substitute instruments", see Ch. IV E). Regarding the remaining "unregulated" sectors, Austrian civil law provides only a limited degree of protection. As equivalence of performance and remuneration is not stipulated[48], freedom of contract is essentially constrained by provisions of immorality (*boni mores*).[49] To this effect, it is settled case-law that "*pittance and starvation wages*" constitute wage usury, which may be presumed if the wage level is conspicuously disproportionate to the value of the employee's performance as the agreement has been reached by exploiting the worker's recklessness, predicament, inexperience or lack of understanding.[50] It should be mentioned, though, that in case specific wage provisions do not apply, almost any remuneration agreement is valid as the limit of immorality only covers cases of extreme imbalance.[51] Thus, strict EU standards would significantly pile pressure to act on the Austrian administration, whose government program already envisaged closing these gaps by appropriate means involving the social partners.[52] Upon first assessment, however, the proposal does not make a very promising impression regarding the remaining gaps, especially since Art 1(3) clarifies that the Directive does not oblige Member States to implement a statutory minimum wage or to make collective agreements universally applicable. Still, some thoughts developed in this context are briefly presented below.

E. Substitute instruments and extension mechanisms

As mentioned above, Austrian labour law provides substitute instruments for collective bargaining agreements, which in terms of their legal nature are ordinances issued by the Federal Conciliation Authority (*Bundeseinigungsamt*). Unlike universal statutory minimum wages, these are not governed by the principle of "one size fits all" but are essentially based on collectively agreed wages in related industries.

[48] Also, Austrian labour law does not regard remuneration as a necessary element of the employment contract. However, section 1152 of the Civil Code sets out that if neither non-remuneration nor some kind of remuneration has been specified in the contract, an appropriate remuneration shall be deemed to be agreed on.

[49] See Section 879 Civil Code. If a wage agreement is usurious or immoral it is subject to (relative) nullity, meaning that the employee must invoke the invalidity of the contractual agreement. Consequently, the employer owes appropriate remuneration as defined in section 1152 of the Civil Code.

[50] See Austrian Supreme Court (OGH) 25.11.1998, 9 ObA 249/98b; 4.12.1996, 9 ObA 2267/96i; 20.3.2003, 8 ObA 167/02w; cf. Robert Rebhahn/Michael Reiner, 'Section 879 ABGB' in Matthias Neumayr/Gert-P. Reissner (eds.), *Zeller Kommentar zum Arbeitsrecht*, 3rd edn. (Vienna: Manz, 2018) margin number 23 et sqq.

[51] See Austrian Supreme Court (OGH) 7.2.1978, 4 Ob 139/77; 4.12.1996 9, ObA 2267/96i.

[52] Government programme 2020-2024, p. 261.

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Without going into too much detail, two instruments can be distinguished: On the one hand, the authority must extend the sectoral, territorial or personal scope of application of an existing collective agreement at the request of a contracting party if the necessary statutory prerequisites are met (*Satzung*).[53] On the other hand, the Federal Conciliation Authority has to set minimum wage rates and minimum amounts for the reimbursement of expenses if requested by an employees' association (*Mindestlohntarif*). This requires that a collective agreement cannot be concluded, due to a lack of collective bargaining bodies on the employer's side.[54]

Although these instruments are used quite rarely compared to the enormous number of collective agreements, they still contribute to high coverage rates. As such mechanisms have proven to be quite effective in other Member States too, it is remarkable that the proposed Directive does not explicitly recognize extension mechanisms, substitute instruments or any hybrid tools.[55] It should be pointed out, however, that Art 3(2) of the proposed Directive defines "statutory minimum wage" as "*a minimum wage set by law, or other binding legal provisions*". This indeed offers a broad concept, including, according to its wording, ordinances such as the substitute instruments provided by Austrian labour law. Consequently, the standards set out in Chapter II of the Directive have to be applied, which in practical terms means that the Austrian legislator would be obliged to ensure that the ordinances issued by the Federal Conciliation Authority comply with the defined criteria of adequacy as laid down in Art 5(2) as well as that potential variations or deductions would have to be limited in line with Art 6 of the Directive.[56] To that end, it should be noted that Recital 21 of the Directive in terms of adequacy refers to indicators commonly used at international level, such as 60% of the gross median wage and 50% of the gross average wage.[57] Bearing in mind the CJEU's pro-integrative and sometimes quite "activist" approach with respect to significant areas of labour law, it remains to be seen how the Court will deal with this sensitive issue.[58]

[53] See section 18 Labour Constitution Act. Such ordinances exist e.g. for the chemical industry, social or health service providers or private educational institutions.

[54] Currently, minimum wage rates have been issued e.g. for housekeepers, au-pairs, employed veterinarians or employees in private households. Similarly, see section 26 Labour Constitution Action regarding the regulation of remuneration for apprentices.

[55] For the implicit recognition see Art 1(3) of the proposal; also see the Commission Staff Working Document, SWD(2020) 245 final. Also see amendment 55 to Art 4 (1) as suggested by the European Parliament in November 2021, https://www.europarl.europa.eu/doceo/document/A-9-2021-0325_EN.html#top (4.12.2021).

[56] See Art 5 and 6.

[57] Also, the explanatory memorandum makes reference the "Kaitz Index" and to the standard of decent living defined by the Council of Europe, which similarly compares the net minimum wage to the net average wage.

[58] See Magdalena Lenglinger, 'Der Vorschlag für eine Richtlinie über angemessene Mindestlöhne in der EU und ihre Bedeutung für Österreich'(2021) ZAS 116-124, p. 116; Opinion of the European Economic and Social Committee, 2020/0310(COD).

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F. Concept of "worker"

Another point of particular significance is that the Directive's concept of "worker" is defined with reference to domestic law, collective agreements or practice in each Member State as well as the case law of the CJEU (Art 2).[59] This broad definition implies that the Directive shall apply to workers as defined by the national legal systems whilst the CJEU's approach, initially developed in the context of Art 45 TFEU and subsequently transferred and applied to a growing number of EU labour law Directives, must also be taken into account.[60]

Interestingly, the explanatory memorandum takes up the issue of workers in non-standard forms of employment and recital 17 of the preamble explicitly addresses categories of workers that are often disputed to have an employment relationship. This includes for instance domestic workers, on-demand workers, intermittent workers, voucher based-workers and platform workers. Particularly in the context of the gig economy, the Commission has committed itself to combatting bogus self-employment and to enhance legal certainty regarding the employment status. For that purpose, a set of measures has recently been proposed through another draft Directive on improving working conditions in platform work.[61] Still, given that "fairness" was promoted as one of the Commission's key concerns, the need for protection of economically dependent self-employed workers has not been properly recognized.[62] Even if the restricted personal scope was to be expected, a somewhat broader field of application would have been desirable as for example the ILO's Global Commission on the Future of Work has recently called on governments to guarantee adequate living wages for all workers "*regardless of their contractual arrangement or employment status*".[63]

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[59] Also see Explanatory Memorandum, COM(2020) 682 final, 12 with references to Directive 2019/1152/ EU on transparent and predictable working conditions in the European Union and Directive 2019/1158/ EU on work-life balance for parents and carers.

[60] See CJEU C-66/85, *Lawrie-Blum*, ECLI:EU:C:1986:284; also see Martin Risak/Thomas Dullinger, *The concept of 'worker' in EU law*, ETUI Report 2018 (Brussels: ETUI aisbl, 2018) p. 140; Nicola Kountouris, 'The Concept of 'Worker' in European Labour Law: Fragmentation, Autonomy and Scope' 47 (2018) ILJ 192–225.

[61] See European Commission, Proposal for a Directive of the European Parliament and of the Council on improving working conditions in platform work, COM(2021) 762 final.

[62] Cf. Recital 17. In this context, however, note the Guidelines clarifying the application of EU competition law to collective agreements of solo self-employed people, Annex to the Communication from the Commission, C(2021) 8838 final.

[63] ILO Global Commission on the Future of Work 2019, 12, 38-39; also see the ILO, Declaration of Philadelphia, 1944, Art III lit d: "*[...] a minimum living wage to all employed and in need of such protection*"; International Labour Conference, 79th Session, General Survey 1992, Report III (Part 4 B) No. 79; also see Valerio De Stefano, Not as Simple as it Seems: The ILO and the Personal Scope of International Labour Standards, available at SSRN: https://ssrn.com/abstract=3790766. It should be noted, however, that Austria has not ratified the ILO Minimum Wage Fixing Convention, 1970 (No. 131).

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Moreover, the definition of "worker" given in Art 2 raises issues regarding the consistent application of the Directive as Member States in their domestic legal systems take divergent approaches in terms of who is to be considered a worker. To this end, it is settled case-law that neither the characterization under national law nor the parties view of the matter may determine the existence of an employment relationship under EU legislation. Although the Court has pointed out that there is no uniform definition of "worker" in EU law[64], it nevertheless has equipped itself with a jurisprudence that ought to allow it to re-classify national employment statuses.[65] Regarding the implementation of the proposed Directive, Member States are thus obliged to adopt a concept of "worker" that may be based on the national understanding but must not fall short of the Court's case law.

This is also relevant with respect to the classification of public sector employees, who under Austrian law are qualified either as civil servants (*Beamte*) or "contractual civil servants" (*Vertragsbedienstete*).[66] Whereas collective bargaining in Austria is restricted to the private sector, wages for the public sector are, formally speaking, unilaterally set by means of statute. In practice, however, wages are informally negotiated between the powerful public sector trade unions and government representatives.[67] With regards to the draft Directive, it has not yet been clarified whether public sector employees are included within the personal scope, and particularly, whether the rules on statutory minimum wages apply to them.

Undoubtedly, an overall picture shows the CJEU's desire for uniform treatment of all employees in order to ensure the effective implementation of EU law. To that purpose, public sector employees are regularly covered by EU labour law instruments.[68] In the past, the Court even sought to include public sector workers within a Directive's personal scope, although it was a

[64] CJEU C-256/01, *Allonby*, ECLI:EU:C:2004:18, para 63, 66; CJEU C-85/96, *Martínez Sala,* ECLI:EU:C:1998:217, para 31.

[65] See among many CJEU C-256/01, *Allonby*, para 71, 72; C-3/87, *Agegate*, ECLI:EU:C:1989:650, para 36; C-413/13, *FNV Kunsten*, ECLI:EU:C:2014:2411, para 35.

[66] Whereas the employment of civil servants is established under public law, employment relationships of "contractual civil servants" are governed by private law.

[67] To that effect, it is in fact barely conceivable that public sector wages are established unilaterally by the legislator. See Contract Staff Act (VertragsbedienstetenG, VBG), Federal Salaries Act (GehaltsG) for federal civil servants; also see special legal provisions such as the Army Fees Act (HeeresgebührenG) or the Judges and Prosecutors Service Act (Richter- und StaatsanwaltschaftsdienstG).

[68] Claudia Schubert,'„Einheit des öffentlichen Dienstes" im europäischen Arbeitsrecht – zur Einbeziehung von Beamten in das europäische Arbeitsrecht', in Elisabeth Brameshuber/Michael Friedrich/Beatrix Karl (eds.), *Festschrift Franz Marhold* (Vienna: Manz, 2020) 739-751; Robert Rebhahn/Michael Reiner, 'Art 153 AEUV', in Ulrich Becker/Armin Hatje/Johann Schoo/Jürgen Schwarze (eds.), *EU-Kommentar*, 4th edn. (Baden-Baden: Nomos, 2019) margin number 10; see for instance CJEU C-222/84, *Johnston*, ECLI:EU:C:1986:206; C-337/10, *Neidel*, ECLI:EU:C:2012:263.

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matter actually reserved to national systems.[69] Based on a purposive interpretation, it is therefore very likely that public sector employees fall within the proposed Directive's personal scope. The Directive's protective objectives, namely to ensure that workers have access to adequate minimum wages allowing for a decent living, apply to *all* workers, regardless of the legal nature of their employment relationship. Besides that, the broad interpretation of the definition of "worker" is supported by an understanding in the light of the principle of equality (Art 20 CFREU), which must be taken into account in all law-making at Union level as well as by Member States implementing EU law. Comparable categories of workers must not be treated differently unless justified on objective and legitimate grounds.[70] Likewise, Member States' discretion to define the concept of "worker" is limited as they may not jeopardize the achievement of the objectives pursued by the Directive and, therefore, deprive it of its effectiveness.[71]

Taking these considerations further, the Directive's personal scope, if interpreted widely, implies that Austria with regard to the public sector indeed has statutory minimum wages as defined in Art 3(2). Consequently, the criteria of adequacy laid down in Art 5 must be respected in this context. This certainly reveals the flaws of the Directive's binary approach. It is arguably not designed to take into account national systems that feature high collective bargaining rates complemented with statutory (minimum) wages.

Nevertheless, the Directive as drafted explicitly makes it possible to set different statutory minimum wages for specific groups of workers. According to Art 6 such variations must be kept to a minimum, must not be discriminatory and must respect the principle of proportionality. Any deductions need to be based on legal rules, be necessary, objectively justified and proportionate. Given that Austria has statutory minimum wages within the meaning of Art 3(2) of the Directive, these rules will be applicable. Yet, it is arguable which circumstances may justify deductions from adequacy in the light of the Directive's objectives as workers earning below the minimum wage are regularly at risk of poverty.[72]

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[69] See CJEU C-212/04, *Adeneler*, ECLI:EU:C:2006:443, para 54-57; C-53/04, *Marrosu and Sardino*, ECLI:EU:C:2006:517, para 40-43; Directive 1999/70/EC.

[70] See Niklas Bruun, 'Art 20, 21 CFREU', in Filip Dorssemont/Klaus Lörcher/Stefan Clauwaert/Mélanie Schmitt (eds.), *The Charter of Fundamental Rights of the European Union and the Employment Relation* (Oxford: Hart Publishing, 2019); Mark Bell, 'Art 20, 21 CFREU', in Eduardo Ales/Mark Bell/Olaf Deinert/Sophie Robin-Olivier (eds.) *International and European Labour Law* (Baden-Baden/Oxford: Nomos/Hart, 2018); Claudia Schubert, supra footnote 69, p. 745; CJEU C-313/04, *Egenberger*, ECLI:EU:C:2018:257, para 33; C-127/07, *Société Arcelor Atlantique et Lorraine*, ECLI:EU:C:2008:728, para 46 et sqq.

[71] CJEU C-393/10, *O'Brien*, ECLI:EU:C:2012:110, para 34 et sqq.

[72] The detailed explanation to Art 6 argues that deductions related to the equipment necessary to perform a job or deductions of allowances in kind, such as accommodation, may be unjustified or disproportionate; see COM(2020) 682 final, p. 13.

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V. Final remarks

With regard to Austria, the proposal on a Directive on adequate minimum wages in the European Union, upon initial assessment, does not appear to entail any significant legislative changes and most likely will have little impact on the traditional and well-functioning collective bargaining system. Practical consequences concerning the wage setting mechanism for public sector employees or regarding substitute instruments most probably will not be far-reaching. The Commission's ambition to strengthen collective bargaining as the main instrument to ensure fair and adequate wages, in any case, is very welcome from an Austrian point of view. Austria, even if considered as a role model in terms of collective bargaining coverage rates, still has a few industry sectors in which workers either do not enjoy minimum wage protection or in which wages are set extremely low.[73] It is quite unlikely, though, that once adopted the proposed Directive will have any real impact on these areas.

From a more general point of view, the Commission's proposal undoubtedly is a positive step towards creating a more social Europe and could constitute an important milestone. The economic downturn caused by the Covid-19 pandemic and subsequent crises has certainly added urgency to the challenges of ensuring minimum standards of living, especially with regard to a decent income as it has become evident that many of the "essential workers" receive a rather low remuneration. Accordingly, promoting decent working conditions and living wages is crucially important not only in the private sector but also for public sector employees and must constitute a substantial part the EU's recovery strategy.

Yet, it remains doubtful whether the Directive will effectively contribute to combat in-work poverty. A study requested by the European Parliament's committee on Employment and Social Affairs has recently recalled that "*increasing minimum wages can only have a limited impact on poverty levels, as poverty often results from low working hours rather than simply low hourly wages, amongst other factors*".[74] Thus, in my opinion, the proposal does not offer a sufficient solution to the problems addressed and a wider range of measures should be on the Union's social policy agenda.[75] Discussions must also focus on how inequalities and challenges related to

[73] Public discussions in Austria recently have focused on workers in bakeries, see e.g. Der Standard, ‚Bäcker suchen händeringend Verkäufer: Wie wär's damit, mehr zu zahlen?' (https://www.derstandard.at/story/2000127723279/baecker-suchen-haenderingend-verkaeufer-wie-waers-mit-mehr-zahlen, 26.11.2021).

[74] See Michele Raitano/Matteo Jessoula/Giovanni Gallo, '*Fighting poverty and social exclusion – including through minimum income schemes*' (2021) 127.

[75] See Ramón Peña-Casas/Dalila Ghailani, 'A European minimum wage framework: the solution to the ongoing increase in in-work poverty in Europe?' in Bart Vanhercke/Slavina Spasova/Boris Fronteddu (eds.), *Social policy in the European Union: state of play 2020,* ETUI and OSE (Brussels: ETUI aisbl, 2021) pp. 133-153; Luca Ratti, 'The proposal for a Directive on Adequate Minimum Wages in the EU' 82 (2021) EU Law Live Weekend Edition 7-15.

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vulnerable (bogus) self-employment, part-time work, (very) short-term contracts and unpaid care work can be tackled.

Either way, as stakeholder positions diverge, it remains to be hoped that the draft Directive's key aspects, namely its respect for the national systems, its encouragement of collective bargaining and its effort to improve enforcement will receive sufficient political support.[76] The choice of a Directive as a binding legal instrument testifies to the Commission's political commitment in this area. Nevertheless, some national parliaments have opposed the proposal; Nordic countries in particular consider the Directive to be a threat to their labour market model. Hence, in spite of the fact that the debate is centered around the question of the Directive's legal feasibility under the EU's current constitutional framework, the major obstacles are of a political nature.

Finally, it should be highlighted that the Directive, despite its weaknesses and if not further diluted, has the potential to be a powerful driver for social progression and could be a turning point for EU action in the field. In its impact assessment the Commission assumed that reaching the indicative reference values will increase the wages of around 10-20 million workers in the EU and reduce the gender pay gap by about 5% or more.[77] This could function as a future benchmark for assessing whether the Directive constitutes more than a political statement.

VI. Bibliography

Stefan Bauer, *Die kollektivvertragliche Deckungsrate in Österreich* (Diploma Thesis, University of Vienna, 2010)

Mark Bell, 'Art 20, 21 CFREU', in Eduardo Ales/Mark Bell/Olaf Deinert/Sophie Robin-Olivier (eds.) *International and European Labour Law* (Baden-Baden/Oxford: Nomos/Hart, 2018)

Elisabeth Brameshuber, 'The importance of sectoral collective bargaining in Austria', in Sylvaine Laulom et al (eds.), *Collective Bargaining Developments in Times of Crisis* (Kluwer Law International, 2017) 89-104

Niklas Bruun, 'Art 20, 21 CFREU', in Filip Dorssemont/Klaus Lörcher/Stefan Clauwaert/Mélanie Schmitt (eds.), *The Charter of Fundamental Rights of the European Union and the Employment Relation* (Oxford: Hart Publishing, 2019)

Valerio De Stefano, Not as Simple as it Seems: The ILO and the Personal Scope of International Labour Standards, available at SSRN: https://ssrn.com/abstract=3790766

Thomas Dullinger, 'Zur Entlohnung von Urlaubsersatzkräften gem § 19 Abs 5 PTSG' (2019) DRdA 448-451

[76] The Directive is expected to be published in the official Journal of the EU in October or November 2022.

[77] European Commission, 'Commission Staff Working Document', SWD(2020) 245 final, pp. 54, 65.

Thomas Dullinger/Sophie Schwertner, 'Der Kollektivvertrag der Österreichischen Fußball-Bundesliga' (2019) SpuRt 156-160

Line Eldring/Kristin Alsos, 'European Minimum Wage: A Nordic Outlook', *Fafo-Report* 16, 2012

Elias Felten/Rudolf Mosler, '100 Jahre Kollektivvertragsrecht' (2020) DRdA, 91-103

Martin Franzen, 'Europäischer Regelungsrahmen für Mindestlöhne?' (2021) EuZA 1-2

Sacha Garben, 'Art 153 TFEU', in Manuel Kellerbauer/Marcus Klamert/Jonathan Tomkin (eds.), *The EU Treaties and the Charter of Fundamental Rights: A Commentary* (Oxford: Oxford University Press, 2019)

Sacha Garben, 'The European Pillar of Social Rights: An Assessment of its Meaning and Significance' 21 (2019) *Cambridge Yearbook of European Legal Studies* 101–127

Nicola Kountouris, 'The Concept of 'Worker' in European Labour Law: Fragmentation, Autonomy and Scope'47 (2018) ILJ 192–225

Magdalena Lenglinger, 'Der Vorschlag für eine Richtlinie über angemessene Mindestlöhne in der EU und ihre Bedeutung für Österreich' (2021) ZAS 116-124

Esther Lynch, Fair wages are key to Europe's recovery, Social Europe, 20.11.2020, https://socialeurope.eu/fair-wages-are-key-to-europes-recovery (22.09.2022)

Nora Melzer-Azodanloo, '*Labour law in Austria*', 2nd edn. (Alphen aan den Rijn: Kluwer Law International, 2017)

Ramón Peña-Casas/Dalila Ghailani, 'A European minimum wage framework: the solution to the ongoing increase in in-work poverty in Europe?' in Bart Vanhercke/Slavina Spasova/Boris Fronteddu (eds.), *Social policy in the European Union: state of play 2020*, ETUI and OSE (Brussels: ETUI aisbl, 2021) 133-153

Press Service of the Parliamentary Administration, '*Joint Letter from Member States to the Presidency and former Presidency of the Council of the European Union regarding a Directive on adequate minimum wages in the European Union*' (50876/EU XXVII.GP); OTS0197, 4.6.2021

Michele Raitano/Matteo Jessoula/Giovanni Gallo, '*Fighting poverty and social exclusion – including through minimum income schemes*' (2021) 127

Robert Rebhahn/Michael Reiner, 'Section 879 ABGB' in Matthias Neumayr/Gert-P. Reissner (eds.), *Zeller Kommentar zum Arbeitsrecht*, 3rd edn. (Vienna: Manz, 2018)

Luca Ratti, 'The proposal for a Directive on Adequate Minimum Wages in the EU' 82 (2021) EU Law Live Weekend Edition 7-15

Robert Rebhahn/Michael Reiner, 'Art 153 AEUV', in Ulrich Becker/Armin Hatje/Johann Schoo/Jürgen Schwarze (eds.), *EU-Kommentar*, 4th edn. (Baden-Baden: Nomos, 2019)

Martin Risak/Thomas Dullinger, *The concept of 'worker' in EU law*, ETUI Report 2018 (Brussels: ETUI aisbl, 2018)

Ulrich Runggaldier 'Vor § 1 – Einleitung' in Theodor Tomandl/Martin Risak (eds.), '*Arbeitsverfassungsgesetz*', 1st supplement (Vienna: Verlag Österreich, 2019)

Adam Sagan/Stefan Witschen/Christopher Schneider, 'Angemessene Mindestlöhne in der EU' (2021) ZESAR 103-111

Franz Schrank 'Section 105 ArbVG', in Tomandl/Martin Risak (eds.), *Arbeitsverfassungsgesetz*, 9th supplement (Vienna: Verlag Österreich, 2019)

Claudia Schubert,'„Einheit des öffentlichen Dienstes" im europäischen Arbeitsrecht – zur Einbeziehung von Beamten in das europäische Arbeitsrecht', in Elisabeth Brameshuber/Michael Friedrich/Beatrix Karl (eds.), *Festschrift Franz Marhold* (Vienna: Manz, 2020) 739-751

Thorsten Schulten, 'Mindestlöhne und Mindestlohnregime im europäischen Vergleich', in Rudolf Mosler/Walter Pfeil (eds.) *Mindestlohn im Spannungsfeld zwischen Kollektivvertragsautonomie und staatlicher Sozialpolitik* (Vienna: ÖGB, 2016) 75-96

Erik Sjödin, 'European Minimum Wage: A Swedish perspective on EU's competence in social policy in the wake of the proposed Directive on adequate minimum wages in the EU' 4 (2022) ELLJ 273-291

Barbara Trost 'Section 105 ArbVG', in Rudolf Strasser/Peter Jabornegg/Reinhard Resch (eds.), *ArbVG* (Vienna: Manz, 2013), accessed via rdb.manz.at

Michaela Windisch-Graetz, '*Arbeitsrecht II*', 11th edn. (Vienna: New Academic Press, 2020)

Susanne Wixforth/Lukas Hochscheidt, 'Minimum-wages directive: It's legal', Social Europe 8.4.2021, https://socialeurope.eu/minimum-wages-directive-its-legal (22.09.2022)

https://www.2021portugal.eu/en/porto-social-summit/porto-social-commitment (1.12.2021)

https://www.derstandard.at/story/2000127723279/baecker-suchen-haenderingend-verkaeufer-wie-waers-mit-mehr-zahlen (26.11.2021)

https://www.destatis.de/DE/Themen/Arbeit/Arbeitsmarkt/Qualitaet-Arbeit/Dimension-5/tarifbindung-arbeitnehmer.html (1.12.2021)

https://ec.europa.eu/commission/presscorner/detail/en/STATEMENT_17_4706 (27.11.2021)

https://ec.europa.eu/growth/single-market/public-procurement_en (29.11.2021)

https://www.europarl.europa.eu/doceo/document/A-9-2021-0325_EN.html#top (4.12.2021)

https://www.financialmirror.com/2021/12/29/national-minimum-wage-above-e924/ (30.1.2022)

https://www.ilo.org/shinyapps/bulkexplorer12/?lang=en&segment=indicator&id=ILR_CBCT_NOC_RT_A (29.11.2021)

https://www.kollektivvertrag.at/kv/fahrradboten-arb/fahrradboten-rahmen/497359?term=fahrrad (19.9.2022)

https://www.kollektivvertrag.at/kv/fussball-bundesliga-oesterreich-arb-ang/fussball-bundesliga-oesterreich-rahmen/240200?term=bundesliga (27.1.2022)

https://www.oegb.at/themen/gewerkschaften-weltweit/europabuero-und-eu/zaehes-ringen-um-faire-loehne-in-der-eu (14.11.2021)

https://orf.at/stories/3271508/ (19.9.2022)