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## COURTESY TRANSLATION

### **Reasoned opinion on the Commission proposal for a directive on minimum wages in the EU (COM(2020)682)**

The Danish Folketing has addressed the Commission proposal for a directive of the European Parliament and of the Council on adequate minimum wages in the European Union and assessed whether it respects the principle of subsidiarity.

A majority in the Danish Folketing (the Social Democratic Party, the Liberal Party, the Danish Peoples Party, the Socialist People's Party, the Red-Green Alliance, the Conservative Party and the New Right) believes that the proposed measures fail to comply with the principle of subsidiarity. Wage conditions are best regulated at national level and by taking into account traditional national practices. Furthermore, the proposed measures to regulate wage conditions are beyond the scope of the EU's supervisory powers, for which reason the EU's prerequisites for making an effective contribution to the provision of adequate wages at the national level are inadequate. The objectives of the Directive can therefore best be achieved by determining wage condition issues at the national level.

The parties do not oppose the purposes of the Directive to create fair competition and encourage closer convergence on better wage and employment conditions. However, such purposes should be achieved by other means, such as building the capacities of the parties involved via the cohesion policy, employment strategy, etc.

The majority considers it important to consistently respect the contractual freedom of the social parties and that decisions be reached as close as possible to the citizen and other parties involved. In Denmark, the labour market parties are regarded as best suited to making decisions on wage development.

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The provisions in Protocol X of the TFEU on social and labour market policy emphasise that the parties are free to reach agreement and highlights their role: According to article 151, “the Union and Member States shall implement measures which take account of the diverse forms of national practices, in particular in the field of contractual relations.” It could be said that this provision reflects the subsidiarity principle. Our assessment of whether the proposal conforms to the subsidiarity principle shall therefore also be seen in the light of a second issue, i.e. whether the proposed measures consistently respect the social parties’ contractual freedom.

On this basis, the majority rejects the Commission’s assessment that the principle of subsidiarity is upheld with regard to respecting contractual freedom.

The majority points out that the parts of the Commission’s proposal pertaining to the enhancement of collective bargaining agreements when these cover less than 70 % of the workforce (Article 4(2)) and enforcement (Articles 11 and 12) are not compatible with the subsidiarity principle.

As the Commission itself states in its memorandum explaining the proposed measures, the Member States with high collective bargaining coverage achieve better results than others in terms of higher wages, fewer low-paid workers, etc. The majority believes that the success of a model like the Danish one is due to the fact that the state is involved in neither setting the criteria for collective bargaining agreements nor their enforcement, and that the parties have full responsibility for both.

If we read Article 4(2) in conjunction with explanation 19, the criteria for collective bargaining negotiations shall be determined by means of legislation or a tripartite agreement. However, this is contradicted in Article 13 of the proposal for a Directive, which states that Member States may entrust the social partners with the implementation of the Directive.

Pursuant to Article 11(1) of the proposal for a Directive, Member States shall ensure that, without prejudice to specific forms of redress and dispute resolution provided for, where applicable, in collective agreements, workers have access to effective and impartial dispute resolution and a right to redress, including adequate compensation, in the case of infringements of their rights relating to statutory minimum wages or minimum wage protection provided by collective agreements. Pursuant to Article 11(2), Member States shall take the measures necessary to protect workers from any adverse treatment by



the employer and from any adverse consequences resulting from a complaint lodged with the employer or resulting from any proceedings initiated with the aim of enforcing compliance with the rights relating to statutory minimum wages or minimum wage protection provided by collective agreements.

It is not clear whether a worker in a Member State that has no statutory minimum wage is entitled to receive a minimum wage established as part of a collective agreement, even if said worker is not protected by the collective bargaining agreement because said worker is employed at a workplace not covered by a collective agreement. In this respect, the proposal for a Directive does not comply with the subsidiarity principle as wage setting via collective agreement works best when the social parties are responsible for its enforcement. That the provision in Article 11(1) states that it applies without prejudice to dispute resolution mechanisms in collective bargaining agreements is inadequate, as it could therefore be understood as giving access to the courts of law on a par with the dispute resolution measures in collective bargaining agreements.

The provision regarding penalties in Article 12 may also lead to the imposition of legal penalty in a situation that could otherwise be resolved by means of arbitration and settlement.

All in all, the majority in the Danish Folketing finds that the proposal does not comply with the subsidiarity principle.

Yours sincerely,

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Chair, European Affairs Committee