



EUROPEAN COMMISSION

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Dear Chair,

The Commission would like to thank the Folketing for its Opinion on the Commission proposal for a Directive on adequate minimum wages in the European Union {COM(2020) 682 final}.

Ensuring that workers in the EU are protected by adequate minimum wages is a priority for the Commission, and part of its ambition for an economy that works for people. In proposing this Directive, the Commission delivers on the commitment of President Ursula von der Leyen in her Political Guidelines for 2019-2024.

Providing jobs that pay an adequate wage is essential to guarantee adequate working and living conditions for workers and their families and to build fair and resilient economies and support inclusive growth.

The proposed Directive aims to ensure that workers in the Union are protected by adequate minimum wages allowing for a decent living wherever they work. To this end, the proposal establishes a framework to increase the access of workers to minimum wage protection. This objective is relevant both for statutory minimum wage systems and for those relying on collective bargaining.

In order to reach these objectives, the proposal aims at promoting collective bargaining on wages in all Member States. Collective bargaining plays a key role for adequate minimum wage protection. For the countries where statutory minimum wages exist, the proposed Directive aims at ensuring that Member States put in place the conditions for statutory minimum wages to be set at adequate levels. Finally, the proposal aims at promoting compliance, and strengthening enforcement and monitoring in all Member States, so that workers can benefit from effective access to minimum wage protection and businesses can benefit from fair competition.

The Commission welcomes the Folketing's broad support for the aims of the proposal and notes its concerns relating to the respect of the subsidiarity principle expressed in its

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reasoned Opinion, notably in relation to the need to fully respect the autonomy and contractual freedom of the social partners. The Commission is pleased to have the opportunity to provide a number of clarifications regarding its proposal and trusts that these will allay the concerns of the Folketing. It would like to refer to the attached Annex, in response to the more technical comments in the Opinion.

The proposed Directive fully respects national competencies and the autonomy of social partners. The proposal does not seek to harmonise the level of minimum wages across the EU nor to establish a uniform mechanism for setting minimum wages in all Member States. Minimum wage protection would continue to be provided through collective agreements or through legal provisions.

The proposed Directive would give a renewed impetus to reform efforts in those Member States where there is a need to improve the functioning of minimum wage setting systems. These efforts would meet the EU's commitment to upgrading Europe's social market economy to fit the ambition of socially fair digital and green transitions and the promise of shared prosperity in the Union.

Following the adoption of the Commission proposal on the 28 October 2020, the ordinary legislative procedure has started. Both the European Parliament and the Council of the EU are examining the legislative proposal.

The Commission hopes that the clarifications provided in this reply address the issues raised by the Folketing in its reasoned Opinion and looks forward to continuing the political dialogue in the future.

Yours faithfully,

*Maroš Šefčovič
Vice-President*

*Nicolas Schmit
Member of the Commission*

The Commission has carefully considered each of the issues raised and welcomes the inquiry that the Folketing has carried out in its reasoned Opinion. Whilst the Commission does not share the conclusions drawn in the Opinion, the detailed work that the Folketing has undertaken constitutes an important contribution to the debate that is now underway. As regards the points to which the Folketing has drawn the Commission's particular attention, it would like to make the following comments:

Compliance with the principle of subsidiarity

The Impact Assessment accompanying the proposal found that the majority of Member States are affected by the problem of insufficient adequacy and/or coverage of minimum wage protection and action at national level has proven insufficient to address the problem.¹ The already existing EU instruments, most notably the European Semester, although helpful, have shown not to have the potential to fully address the problem.

As mentioned in the Explanatory Memorandum,² having access to minimum wages guaranteeing a decent standard of living is a pivotal element of adequate working conditions. While pay at national level falls unequivocally under the competence of the Member States, the large differences in standards for accessing minimum wage protection are part of working conditions. These differences create important discrepancies in the Union, which may undermine achieving the Union's goals as set in Article 3 of the Treaty on the European Union, notably in relation to "the sustainable development of Europe, based on [...] a highly competitive social market economy, aiming at full employment and social progress". On these grounds, such discrepancies can be best addressed at EU level.

Over the years, Member States have taken steps towards improving their minimum wage systems, but national action has often not been enough to address existing problems. Without policy action at EU level, individual countries may indeed be little inclined to improve their minimum wage settings because of the perception that this could negatively affect their external cost competitiveness.

By setting clear expectations across the Union and by providing the necessary momentum for reforms towards common objectives, action at EU level can be more effective at strengthening minimum wage setting systems than action at national level, and at ensuring that progress is not partial or uneven across countries.

The proposal is based on Article 153 (1) (b) TFEU referring to working conditions. In view of Article 153 (5) TFEU as interpreted in the case law³ of the Court of Justice of the EU, any EU action in the field of minimum wages shall not seek to harmonise the level of minimum wages across the EU, nor would it seek to establish a uniform mechanism for setting minimum wages. Action at EU level could thus consist in setting up a framework

¹ See section 3 of the Impact Assessment.

² See section 2 of the Explanatory Memorandum accompanying the proposal.

³ E.g. Case C-268/06, Impact, point 124-125; Case C-307/05, Del Cerro Alonso, point 41.

to ensure that national minimum wage setting systems allow workers to access adequate minimum wage protection, either in the form of a statutory minimum wage or set in collective agreements. This approach would not interfere with Member States' and social partners' competence to determine the modalities of their minimum wage setting frameworks, and in particular the level of their minimum wages, in line with the Treaty.

Article 4 (2)

With regard to your remarks concerning Article 4 (2), the Commission stresses that, according to Article 13 of the same text, Member States may entrust the social partners with the implementation of this Directive, where social partners jointly request to do so. Also in this case, Member States shall take all necessary steps to ensure that the results sought by this Directive are guaranteed at all times. Article 13 of the draft Directive is in line with Article 153 (3) of the Treaty on the Functioning the European Union.⁴

The Commission disagrees with the interpretation that the criteria for collective bargaining negotiations shall be determined by means of legislation or tripartite agreements when a Member State chooses to entrust social partners with the implementation of the Directive. Article 13 of the text allows Member States to entrust the social partners with the implementation of the Directive, including Article 4. However, Member States retain the full responsibility for the implementation of the Directive. If a Member State chooses to make use of Article 13, the social partners would then implement the obligations arising from the Directive, using the forms and methods at their disposal, such as collective agreements.

Moreover, Article 1 (1) para 2 of the draft Directive makes clear that it shall be without prejudice to the full respect of the autonomy of social partners, as well as their right to negotiate and conclude collective agreements.

Should the Member State find that social partners fail to correctly implement the Directive, it will need to make use of its powers to remediate the situation, based on Article 13 of the draft Directive and Article 153 (3) TFEU.

Article 11

With regard to Article 11, as stated in the Explanatory Memorandum, this provision requires Member States to ensure that workers and their representatives have access to effective and impartial dispute resolution and a right to redress, in case they decide to exercise their right of defence with regard to established minimum wage protection. This refers to the infringement of the rights of workers, related to either statutory minimum wages or to wage protection provided by collective agreements, and therefore would not be triggered in the case neither of these exist.

⁴ Article 153 (3) TFEU states that “a Member State may entrust management and labour, at their joint request, with the implementation of directives adopted pursuant to paragraph 2, or, where appropriate, with the implementation of a Council decision adopted in accordance with Article 155”.

The expression “without prejudice to specific forms of redress and dispute resolution provided for, where applicable, in collective agreements” is meant to clarify that the provisions of this Article do not change nor harm the specific forms of redress and dispute resolution existing in collective agreements. Should the Member State find that these existing forms already fulfil the conditions of Article 11, this should be notified during the transposition process, explaining why no additional forms of redress or dispute resolution would be required.

Article 12

With regard to Article 12, the Commission underlines that it falls under the competence of the Member State to establish the precise penalties and the rules applicable to them, in such way that the conditions established by the Directive can be effectively implemented, including the possibility to resolve the situation by means of arbitration and settlement.

Both for Article 11 and for Article 12, the Commission underlines that similar provisions were included in already adopted EU acts, such as Council Directive 2000/78/EC of 27 November 2000 establishing a general framework for equal treatment in employment and occupation, or Directive (EU) 2019/1152 of the European Parliament and of the Council of 20 June 2019 on transparent and predictable working conditions in the European Union.