



EUROPEAN COMMISSION

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Dear Chair,

The Commission would like to thank the Országgyűlés for its Opinion on the 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 draft Directive, the Commission delivers on the commitment of President Ursula von der Leyen in her Political Guidelines for 2019-2024, and takes an important step towards the implementation of the European Pillar of Social Rights, jointly proclaimed by the European Parliament, the Council and the Commission in November 2017.

Providing jobs that pay an adequate wage is essential to guaranteeing adequate working and living conditions for workers and their families, building fair and resilient economies and supporting 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 improve the adequacy of minimum wages and to increase the access of workers to minimum wage protection. These objectives are 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 setting statutory minimum wages at adequate levels. Finally, the proposal aims at promoting compliance, and strengthening enforcement and monitoring in all Member

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States, so that workers can benefit from effective access to minimum wage protection and businesses can benefit from fair competition.

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 freely bargained collective agreements or through legal provisions. Moreover, the Commission proposal provides sufficient flexibility for Member States to take into account the economic conditions and impacts on particular sectors, regions and businesses when setting adequate minimum wages.

The draft Directive would give a renewed impetus to reform efforts in those Member States where there is a need for improving the functioning of minimum wage setting systems, thus meeting 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.

The Commission notes the concerns raised by the Országgyűlés, notably in relation to the EU competence in the field of social policy, the legal basis of the proposed Directive, the consideration of the impact of the proposal on the economy and on the competitiveness of businesses, and the respect of social partners' autonomy. 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 Committee.

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

The Commission would like to refer to the attached Annex in response to the more technical comments in the Opinion.

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

Yours faithfully,

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Vice-President*

*Nicolas Schmit
Member of the Commission*

The Commission has carefully considered each of the issues raised and welcomes the inquiry that the Országgyűlés has carried out in its Opinion. Whilst the Commission does not share the conclusions drawn in the Opinion, the detailed work that the Országgyűlés has undertaken constitutes an important contribution to the debate that is currently underway.

As regards the specific points to which the Országgyűlés has drawn the attention, the Commission would like to make the following comments.

Legal basis of the draft Directive and Treaty limits to EU competence

As shown in the Explanatory Memorandum and in the Impact Assessment accompanying the proposal,¹ the proposal is fully in line with the competences granted to the EU by the Treaties. Given that wages, including minimum wages, are a key component of working conditions, Article 153 (1) (b) of the Treaty on the Functioning of the European Union (TFEU) is the appropriate legal basis for such an initiative.

The initiative complies with the limits set by Article 153(5) TFEU, as interpreted by the Court of Justice of the EU. Article 153(5) TFEU is indeed an exception to the Union's competence, provided in Article 153, including the competence concerning "working conditions" under article 153 (1) (b). As an exception, Article 153(5) TFEU has to be interpreted and applied in a strict manner, so as not to render ineffective the rest of the competences in social policy conferred upon the Union by Article 153 paragraphs (1) to (4) TFEU.

In view of the constant case law of the Court of Justice² of the EU in relation to Article 153 (5) TFEU, any EU action in the field of minimum wages should not seek to harmonise the level of minimum wages across the EU, nor should it seek to establish a uniform mechanism for setting minimum wages. Therefore, the draft Directive establishes a framework 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 of wages set in collective agreements. It lays down minimum requirements, thus leaving as much scope for national decisions as possible to allow Member States to take into account their national economic circumstances and the specificities of their minimum wage setting systems. This approach does not interfere with Member States' and social partners' competence to determine the detailed modalities of their minimum wage setting frameworks, and in particular the level of their minimum wages, in line with the Treaty.

While the Commission's Proposal establishes a framework in which the Member States will act, such a framework clearly leaves the Member States or social partners free to set minimum wage levels. That is exactly the freedom guaranteed by Article 153(5) TFEU, as clarified by the above-mentioned case law.

¹ See Section 3.1 of the Impact Assessment accompanying the Proposal.

² E.g. Case C-268/06, Impact, point 124-125; Case C-307/05, Del Cerro Alonso, point 41

In conclusion, when drafting its Proposal, the Commission fully respected the limitations set out in Article 153(5) TFEU.

On the obligations applicable to the Member States

The proposal for a Directive on adequate minimum wages sets an EU framework addressed to all Member States. At the same time, it caters for the large differences in the way minimum wage protection is ensured in each Member State (e.g. statutory minimum wages and/or collectively agreed wages) so as not to call into question the specificities of national systems and traditions, and not to interfere with the autonomy of social partners.

In line with Article 5 (4) of the Treaty on the European Union (TEU) and with Protocol No 2 annexed to the Treaties³, the Proposal is tailored in such a way as to ensure that the degree of intervention required does not exceed what is necessary to reach the proposal's objectives and minimises the administrative burden that may arise from implementing its provisions. Furthermore, it provides for the necessary flexibility to take into account the economic conditions and circumstances proper to each Member State.

The approach retained leaves Member States free to decide how to comply with the minimum requirements set in the Proposal. This being said, all Member States would have to consider policy and/or legislative changes to strengthen collective bargaining and enforcement, and ensure better compliance. Member States with statutory minimum wages would also have to review the modalities of their statutory minimum wage setting frameworks, and strengthen social partners' consultation as necessary.

On minimum wage developments in Hungary and the economic effects of the proposal

The proposed Directive provides sufficient flexibility to take into account social and economic developments, including productivity and employment trends. In line with recital 21 of the proposed Directive, the adequacy of statutory minimum wages is to be determined in view of the national socio-economic conditions, including employment growth, competitiveness as well as regional and sectoral developments.

As shown in the Impact Assessment, if Hungary increased its statutory minimum wage to 50% of the average wage, which is the highest of both reference values, it is estimated that about 20% of workers would benefit. This would imply a reduction of about 25% in in-work poverty and 4% in the gender wage gap. The simulations carried out show an increase in aggregate wages in the economy [of about 1.6%, in case of a statutory minimum wage increase to 50% of the average wage, and of 0.8% in case of a minimum wage increase to 60% of the median wage]. As regards employment, the possible negative impact is expected to be limited [a decrease of 0.5% in the case of a statutory minimum wage increase to 50% of the average wage, and of 0.2% in case of a minimum wage increase to 60% of the median wage]. The impact on firms would be mitigated by increases in the consumption of low-wage earners, which would support domestic

³ Protocol (No 2) on the application of the principles of subsidiarity and proportionality, annexed to the Treaty on the European Union and to the Treaty on the Functioning of the European Union.

demand. Firms, in particular SMEs, would also benefit from more gradual and predictable minimum wage increases, which would improve the business environment.

Provisions on collective bargaining

According to the analysis contained in the Impact Assessment, Member States with a high collective bargaining coverage (above 70%) tend to have a low share of low-wage workers, low wage inequality and high minimum wages.⁴ The provisions on the promotion of collective bargaining contained in Article 4 were therefore included in the Proposal as a means to achieve its objective, i.e. to ensure adequate minimum wage protection in the EU.

The draft Directive recognises the key role played by collective bargaining for adequate minimum wage protection and asks all Member States to take action to promote collective bargaining as necessary. Member States with a collective bargaining coverage below 70%, would have to also provide for a framework of enabling conditions, either by law or agreement with the social partners, and to establish an action plan to promote collective bargaining.

The design of the framework and of the action plan would be entirely in the hands of the respective Member States, in full respect of national specificities and traditions and of the autonomy of social partners, and taking into account the economic conditions and development of each country. At the same time, the Commission underlines that Member States would need to design their action plans in such a way to pursue the aim of Article 4 in an effective way.

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

Choice of the legal instrument

The Impact Assessment discusses the possible legal instrument under chapter 8. Based on the analysis therein, the Commission considered both a binding instrument (directive) and a non-binding one (Council recommendation) and decided to propose a directive.

Firstly, Article 153 (2) TFEU provides the possibility of adopting Directives in the area of 'working conditions' laying down minimum requirements for implementation by Member States⁵. Secondly, in line with Article 288 TFEU, a Directive gives certainty about the binding requirements to be applied by Member States. Therefore, this instrument has a high degree of effectiveness in reaching the objectives of the initiative, while leaving room for Member States to decide on the forms and methods of implementation. Member States can also entrust the social partners, at their joint request, with the implementation of the Directive, in line with Article 153(3) TFEU.

⁴ See Impact Assessment, Annex 9.

⁵ Art 153(2) (b) also states that "Such directives shall avoid imposing administrative, financial and legal constraints in a way which would hold back the creation and development of small and medium-sized undertakings".