



EUROPEAN COMMISSION

*Brussels, 7.4.2021
C(2021) 2499 final*

Dear Speaker,

The Commission would like to thank the Kamra tad-Deputati 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, 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 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 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

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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 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.

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.

The Commission notes the concerns raised by the Kamra tad-Deputati in its reasoned Opinion in relation to the respect of the principle of subsidiarity and the EU competence in the field of wages, notably with regard to Articles 4 on collective bargaining and 5 on adequacy of the proposed Directive. 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 Kamra tad-Deputati. The Commission would like to refer to the attached Annex in response to the more technical comments in the Opinion.

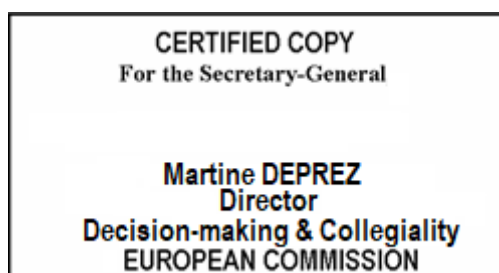
Following the adoption of the Commission proposal on the 28 October 2020, the ordinary legislative procedure has started. Both the European Parliament the Council of the EU are examining the legislative proposal.

The Commission hopes that the clarifications provided in this reply address the issues raised by the Kamra tad-Deputati in its reasoned Opinion 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 Kamra tad-Deputati has carried out in its reasoned Opinion into this important subject. Whilst the Commission does not share the conclusions drawn in the Opinion, the detailed work that the Kamra tad-Deputati has undertaken constitutes an important contribution to the debate that is currently underway.

As regards the specific points to which the Kamra tad-Deputati has drawn the attention of the Commission, the Commission would like to make the following comments.

Cross-border dimension and compliance with the principle of subsidiarity

While minimum wage protection exists in all Member States, many workers in the EU are currently not protected by adequate minimum wages.

As shown in the Impact Assessment accompanying the proposal¹, the majority of Member States are faced with the problem of insufficient adequacy and/or coverage of minimum wages, and action at national level has proven insufficient to address the problem. The already existing EU instruments, most notably the European Semester, although helpful, have shown not to have the potential to fully address the problem.

Moreover, as stated in the Explanatory Memorandum², having access to a minimum wage 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 adequate minimum wage protection are part of working conditions. These differences create significant 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 as concerns "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 Union 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 be little inclined to improve their minimum wage settings because of the perception that this could negatively affect their external cost competitiveness. There is a need for action at EU level to improve the adequacy of minimum wages and to increase the access of workers to minimum wage protection. Therefore, this proposed Directive is in accordance with the principle of subsidiarity laid down in Article 5 TEU since these objectives cannot be sufficiently achieved by the Member States. Moreover, in accordance with the principle of proportionality, the proposed Directive does not go beyond what is necessary in order to achieve them.

¹ For more details, see Section 3.2 of the Impact Assessment accompanying the Proposal.

² For more details, see Section 2 of the Explanatory Memorandum.

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 in strengthening minimum wage setting systems than action at national level, and in ensuring that progress is not partial or uneven across countries.

EU action on adequate minimum wages would improve the fairness of the EU labour market, reduce wage inequality, promote economic and social progress and cohesion, help reduce the gender pay gap, and contribute to upward social convergence. These objectives are clearly set out in the EU Treaties and reflected in the European Pillar of Social Rights. Moreover, EU action would also ensure a level playing field in the Single Market by helping to address large differences in the coverage and adequacy of minimum wages that are not justified by underlying economic conditions.

Limits to EU competence according to Article 153 (5) TFEU

As stated in the Explanatory Memorandum and in the Impact Assessment accompanying the proposal,³ Article 153 TFEU is the appropriate legal basis for an EU initiative on adequate minimum wages. Given that wages, including minimum wages, are a key component of working conditions, the initiative is based on Article 153 (1) (b) TFEU on ‘working conditions’.

In view of this, and of the constant case law of the Court of Justice of the EU in relation to Article 153 (5) TFEU⁴, 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. Action at EU level could thus consist in setting up 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 would lay 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 would 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, it would clearly leave the Member States or social partners free to set minimum wage levels. That is exactly the freedom guaranteed by Article 153(5) TFEU.

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

³ See Section 3.1 of the Impact Assessment accompanying the Proposal.

⁴ E.g. Case C-268/06, Impact, point 124-125; Case C-307/05, Del Cerro Alonso, point 41

Article 4 on collective bargaining

The provisions on the promotion of collective bargaining contained in Article 4 were included in the Proposal as a means to achieve its objective, i.e. to ensure adequate minimum wage protection in the EU. In this sense, these provisions are ancillary to the centre of gravity of the Proposal. The analysis contained in the Impact Assessment shows in fact that 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.⁵

The proposed 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. With a collective bargaining coverage below 70%, the concerned Member State would have to provide a framework of enabling conditions, either by law or through an 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 individual countries, 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.

The reference to a rate of 70% collective bargaining coverage contained in the Proposal is not a target, but a trigger for Member States to act. This element has therefore been assessed in the Impact Assessment in conjunction with the other measures contained in the policy package to which it belongs (Package B), with a view to comparing the policy options considered for the initiative.⁶ The Impact Assessment suggests that the measure introducing a 70% collective bargaining coverage rate as trigger for action by Member States could have a direct impact on increasing coverage in a number of Member States. This in turn would be expected to have an indirect positive impact on the adequacy of minimum wages in Member States with low collective bargaining coverage, although the extent of this impact would depend on the actions taken by the Member States. These measures are expected to bring some social benefits but are not expected to lead to significant economic impacts. Small one-off costs could arise for public budgets in case Member States were required to provide a framework of enabling conditions, and to establish an action plan to promote collective bargaining. In addition, some costs could arise from promoting capacity-building activities for social partners, depending on the amount of funds that Member States would choose to dedicate.

Finally, the Commission takes good note of the statements made in the Opinion with regard to the good functioning of collective bargaining in Malta. The Commission would like to recall that should a Member State find that existing law or practice already fulfil the conditions of the Directive, this should be notified during the transposition process.

⁵ See Impact Assessment, Annex 9.

⁶ See Section 6 and Annex 12 of the Impact assessment.

Criteria and reference values in Article 5

Ensuring adequate minimum wage protection in the Union is the overarching objective of the Proposal. Member States would be free to decide by which means to reach this objective, in line with national traditions and practice and within the framework of minimum procedural requirements set in the Proposal.

With a view to supporting the adequacy of statutory minimum wages, Article 5(2) of the draft Directive lists four criteria that should at least be taken into account when setting and updating statutory minimum wages.

Article 5(2) nevertheless leaves ample flexibility to Member States on the way to determine national criteria, and the most appropriate way to apply them in light of national practice and socio-economic conditions. Member States are also free to take into account additional criteria, such as the impact on employment and competitiveness.

According to Article 5(3) of the Proposal, reference values should be taken into account to guide the assessment of statutory minimum wage adequacy. While the Proposal refers to indicative indicators related to gross wages, Member States remain free to decide which indicators and reference values to use, in light of national practices and socio-economic conditions.