

**Proposal for a
Directive of the European Parliament and of the Council on
Adequate Minimum wages in the European Union**

COM (2020) 682

**Reasoned Opinion
of the
House of Representatives, Parliament of Malta**

1. Aim of the Proposal

The fundamental objective of this proposed Directive is to establish the minimum requirements at Union level to ensure both that minimum wages are set at adequate level and that workers have access to minimum wage protection, in the form of a statutory minimum wage or in the form of wages set under collective agreements.

2. Commission justification on compliance with the principle of subsidiarity

The legal basis for the proposed Directive is Article 153 (1) (b) of the Treaty on the Functioning of the European Union (TFEU).

Subsidiarity (for non-exclusive competence)

Article 153

1. With a view to achieving the objectives of Article 151, the Union shall support and complement the activities of the Member States in the following fields:

(b) working conditions;

The proposed Directive is based on Article 153 (1) (b) of the Treaty on the Functioning of the European Union, which prescribes the Union to support and complement the activities of Member States in the field of working conditions within the boundaries of the principles of subsidiarity and proportionality . Since it does not contain measures directly affecting the level of pay, it fully respects the limits imposed to Union Action by Article 153(5) TFEU.

Minimum wage policies have been subject to multilateral surveillance within the European Semester and the EU has issued policy guidance to selected Member States. Nevertheless, national action has not been enough to address the problem of insufficient adequacy and/or coverage of minimum wage protection. 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.

The proposed Directive provides for minimum standards thus ensuring that the degree of intervention will be kept to the minimum necessary in order to reach the objectives of the proposal. The proposal leaves as much scope for national decision as possible, whilst still achieving the objectives of improving working conditions by establishing a framework for workers in the Union to have access to minimum wage protection. The principle of proportionality is respected considering the size and nature of the identified problems.

Proportionality

The proposed Directive provides for minimum standards thus ensuring that the degree of intervention will be kept to the minimum necessary to reach the objectives of the proposal.

Moreover, it allows Member States to implement the provisions taking into account their national economic circumstances and the specificities of their minimum wage setting systems.

According to this article, the EU shall support and complement activities of Member States in such areas as working conditions to achieve the objectives stated in Article 151, which include improvements to living and working conditions. These provisions shall however not be applied to pay, the right of association, the right to strike or the right to impose lock-outs (Article 153 (5)).

3. Evaluation on the compliance of the principle of subsidiarity

The House of Representatives of Malta notes that the principles of subsidiarity and proportionality become relevant where the Union and the Member States share competence in a sector in terms of the Treaty on European Union and the Treaty on the Functioning of the European Union.

The House of Representatives of Malta retains that the Proposed Directive on Adequate Minimum wages in the European Union does not comply with the principle of subsidiarity. Thus, The Maltese Parliament has examined the Proposal for a Directive of the European Parliament and of the Council on adequate minimum wages in the European Union and concluded that such Proposal **does not comply with the principle of subsidiarity**. Hence, according to the provisions of Protocol No 2 of the Lisbon Treaty, the following is a reasoned opinion by the Maltese Parliament on the afore-mentioned proposal indicating this breach.

4. Proposed Measures and Conclusions

The Maltese Parliament considers that the European Commission does not sufficiently explain how the proposal complies with the principle of subsidiarity. The Commission states that the proposed Directive is based on Article 153 (1) (b) of the Treaty on the Functioning of the European Union (TFEU). According to this article, the EU shall support and complement activities of Member States in such areas as working conditions to achieve the objectives stated in Article 151 TFEU, which include improvements to living and

working conditions. The provisions shall however not be applied pay, the right of association, the right to strike or the right to impose lock-outs (Article 153 (5)). Furthermore, it is noted that the Commission takes the view that the Proposal respects the limits for EU competences as it does not contain a call for measures that directly influence wage levels.

The Maltese Parliament does not agree with the Commission's interpretation. The Treaty states that it is the Member States themselves that regulate matters concerning wage conditions and that the EU lacks the authority to legislate in this area. Since parts of the Proposal are proposed to be binding for all Member States, the Maltese Parliament sees this as an infringement on national mechanisms for wage formation.

To this effect, Malta considers that Articles 4 and 5 of the Proposal go diametrically counter to the subsidiarity principle. This is because ultimately the Union can and must be effective and decisive in its actions, yet in so doing, the Proposal must be providing protection for specific areas of shared competencies taking into consideration the territorial specificities of each Member State and related interests, which through Article 4 and 5 fails to do so, given that upon a clear examination of both Articles with the rest of the proposed Directive, seem to impose a one size fits all model of minimum wage setting, particularly to Member States with statutory minimum wages. The inclusion of Articles 4 and 5 imply that: a) collective bargaining is Union competence; and b) that the Union has a role to play in determining the level and coverage of the statutory minimum wages in the national labour markets and particularly specifying a framework (national criteria) as well as the indicative reference values through which statutory minimum wages are to be adjusted and compared to the detriment of national preferences that in Malta's case were established through consultation with social partners. In that regard, Malta reiterates that wage setting is and should remain the prerogative of each Member State.

In the case of Article 4, while reiterating the fact that wage conditions are best regulated at a national level and by taking into account national practices, the Maltese Parliament notes that Malta has a good legal framework in place to regulate collective bargaining, and so it is very unlikely that the Proposal is going to change anything markedly better justifying any changes in this regard. The existing collective bargaining system in place in Malta is functioning well and is sufficient, operating fully within the general spirit of freedom of contract. In fact, in the collective bargaining process, the Government does not intervene and is carried out on an enterprise level. The Commission's Proposal creates more ambiguity through its requirement of an action plan and seems to ignore the heterogeneity in the structures of the economy of Member States with the consequence that collective bargaining is more challenging in some of the emerging activities in the services sectors. In addition, the European Commission has not illustrated the economic impact of raising the coverage of collective bargaining to 70% particularly with respect to employment and external competitiveness of SMEs.

Regarding Article 5, the Maltese Parliament also has its concerns given that eventually it is up to the Member States that have statutory minimum wages to establish criteria which are best suited for their respective labour market and economic realities, while respecting the role of social partners. While Malta shares the objective of the Proposal that employees receive wages that allow a reasonable standard of living wherever they work in the EU, at

the same time such objectives can be effectively achieved through actions by Member States, particularly since the preconditions and systems for wage formation are different from one Member State to another. In fact, there is no clear transnational dimension to the issues that justifies intervention by the Commission through a Directive. There is thus no added value to be gained from measures at EU level for matters relating to wage formation.

In Malta's case, but possibly in the case of other Member States, this Proposal will result in a complete change in the framework for adjusting statutory minimum wages. Specifically, the Directive specifies criteria to guide the adequacy, setting and updating of statutory minimum wages, which criteria are not present in the current regime. The Maltese Parliament notes that whilst the identified criteria are relevant, these are not necessarily the only relevant ones nor the most important ones. Specifically, criteria such as the level of unemployment and the state of the labour market are also important indicators to look at when setting and updating the statutory minimum wage. Thus, whilst noting that present draft of the Proposal does allow a degree of flexibility for Member States to determine the adequacy of statutory minimum wages, the Maltese Parliament holds some reservations with respect to the prescriptiveness of the criteria and would favour more flexibility.

As a result, the proposed Directive is expected to change the process underpinning the setting of the minimum wage in Malta and shift towards a framework that would necessitate an element of negotiations amongst social partners thus raising the risk of industrial conflict in a context where at present this is rather limited. The Maltese Parliament considers this risk to be undesirable as it gives rise to uncertainty in the wage process that is detrimental the creation of jobs and economic wellbeing in an area which is member state competence.

5. Recommendation

For the above-mentioned reasons, the Maltese Parliament opines that the Proposal for a Directive on Adequate Minimum Wages in the European Union fails to comply with the principle of subsidiarity.

The Committee on Foreign and European Affairs has decided to object to the Proposal and to deliver this reasoned opinion in terms of the procedure defined in Article 6 of Protocol No. 2 concerning 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.

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