



Council of the
European Union

044627/EU XXVII. GP
Eingelangt am 16/12/20

Brussels, 16 December 2020
(OR. en, da)

14106/20

Interinstitutional File:
2020/0310(COD)

SOC 813
EMPL 569
CODEC 1360
INST 307
PARLNAT 138

COVER NOTE

From:	The Danish Parliament
date of receipt:	15 December 2020
To:	The President of the Council of the European Union
Subject:	Proposal for a DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL on adequate minimum wages in the European Union [12477/20 + ADD 1 + ADD 2 + ADD 3 - COM(2020) 682 final] - Reasoned opinion on the application of the Principles of Subsidiarity and Proportionality

Delegations will find enclosed the reasoned opinion of the Danish Parliament on the above,
followed by a courtesy English translation.



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Begrundet udtalelse om Kommissionens forslag til direktiv om mindsteløn i EU (KOM(2020)682)

15. december 2020

Folketinget har behandlet Kommissionens forslag til Europa-Parlamentets og Rådets direktiv om passende mindstelønninger i Den Europæiske Union og undersøgt, om det overholder nærhedsprincippet.

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Et flertal i Folketinget (Socialdemokratiet, Venstre, Dansk Folkeparti, Socialistisk Folkeparti, Enhedslisten, Konservative Folkeparti og Nye Borgerlige) finder, at forslaget strider mod nærhedsprincippet. Lønforhold fastsættes bedst på nationalt niveau under hensyn til de forskellige nationale traditioner. Samtidig ligger forslag om lønforhold uden for EU's beføjelser, hvorfor EU af den grund har begrænsede forudsætninger for effektivt at bidrage til lønninger på nationalt niveau er tilstrækkelige. Direktivets mål kan derfor bedst opnås ved fastsættelse af lønforhold på nationalt niveau.

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Partierne er ikke uenige i direktivets formål om at skabe fair konkurrence og bidrage til stigende konvergens i opadgående retning for løn- og ansættelsesvilkår. Det bør imidlertid ske ved andre midler, såsom kapacitetsopbygning af parterne gennem samhørighedspolitikken, beskæftigelsesstrategien mv.

Det er efter flertallets opfattelse væsentligt, at parternes aftalefrihed på lønområdet fuldt ud respekteres og at beslutninger træffes så tæt på borgerne og de berørte parter som muligt. I Danmark er det arbejdsmarkedets parter, som anses for bedst egnede til at træffe beslutninger om lønudvikling.

Afsnittet om social- og arbejdsmarkedspolitikken (afsnit X) i TEUF indeholder i formålsbestemmelsen en formulering, der fremhæver parternes aftalefrihed og deres rolle: Ifølge artikel 151 "iværksætter Unionen og medlemsstaterne foranstaltninger, der tager hensyn til forskellene i national praksis, særligt på

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overenskomstområdet". Bestemmelsen kan siges at afspejle nærhedsprincippet. Vurderingen af, om nærhedsprincippet er overholdt, skal derfor også ses i lyset af, om forslaget fuldt ud respekterer aftalefriheden.

Flertallet er på den baggrund også uenig i Kommissionens vurdering af, at nærhedsprincippet er overholdt i forhold til at respektere aftalefriheden.

Flertallet påpeger, at de dele af forslaget, der vedrører fremme af kollektive forhandlinger ved en overenskomstdækning under 70 procent (artikel 4, stk. 2) og håndhævelse (artikel 11 og 12) ikke er i overensstemmelse med nærhedsprincippet.

Som Kommissionen selv fremhæver i begrundelsen til forslaget, er der i lande med høj overenskomstdækning bedre resultater end i andre lande i form af højere løn, færre lavtlønnede m.v. Efter flertallets opfattelse kan succesen for en model som den danske tilskrives, at staten overhovedet ikke blander sig i rammerne for overenskomsterne eller i håndhævelsen heraf, således at parterne har det fulde ansvar herfor.

Artikel 4, stk. 2, læst sammen med betragtning 19, indebærer, at rammer til fremme af kollektive forhandlinger skal ske ved lov eller trepartsaftale. Denne konstatering står dog tilsyneladende i modsætning til direktivforslagets artikel 13, hvorefter det kan overlades til arbejdsmarkedets parter at gennemføre direktivet.

Efter forslaget artikel 11, stk. 1, skal medlemsstaterne sikre, at arbejdstagere har adgang til effektiv og upartisk tvistbilæggelse og en ret til genopretning, herunder til passende kompensation, i tilfælde af krænkelse af deres rettigheder i forbindelse med lovbestemte mindstelønninger eller beskyttelse af mindstelønninger gennem kollektive overenskomster, uden at dette berører særlige klage- og tvistbilægelsesprocedurer i henhold til relevante kollektive overenskomster. Endvidere skal medlemsstaterne efter stk. 2 sikre, at arbejdstagerne beskyttes mod ugunstig behandling fra arbejdsgiverens side og eventuelle negative følger af en klage, der er indgivet til arbejdsgiveren, eller af procedurer, der indledes med det formål at sikre overholdelse af de rettigheder, der er forbundet med lovbestemte mindstelønninger eller beskyttelse af mindstelønninger gennem kollektive overenskomster.

Det er uklart, om en arbejdstager i et land uden lovbestemt mindsteløn har mulighed for at håndhæve en mindsteløn i en kollektiv overenskomst, selv om arbejdstageren ikke er omfattet af overenskomsten, fordi vedkommende



er ansat på en arbejdsplads uden overenskomst. Direktivforslaget er derfor på dette punkt ikke i overensstemmelse med nærhedsprincippet, idet sikring af løn ved kollektiv overenskomst fungerer mest effektivt, når arbejdsmarkedets parter selv er ansvarlig for håndhævelse. Det er ikke tilstrækkeligt, at det i artikel 11, stk. 1, står, at bestemmelsen ikke berører håndhævelsesmekanismer i kollektive overenskomster, idet bestemmelsen kan forstås som adgang til at gå til domstolene parallelt med overenskomsternes egne konflikt-løsningsmekanismer.

Bestemmelsen om straf i artikel 12 kan også føre til, at der skal idømmes straf i en situation, hvor man ellers ville løse det ved mægling og forlig.

Samlet set finder et flertal i Folketinget flertal, at forslaget ikke overholder nærhedsprincippet.

Med venlig hilsen

Eva Kjer Hansen
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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.

15. December 2020

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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,

Eva Kjer Hansen
Chair, European Affairs Committee