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From:	European Economic and Social Committee
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To:	Mr Jeppe TRANHOLM-MIKKELSEN, Secretary-General 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 - <i>Opinion of the European Economic and Social Committee</i>
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Delegations will find attached the opinion adopted by the European Economic and Social Committee on the above.

Other language versions, if needed, will soon be available on the following website :
<https://dmsearch.eesc.europa.eu/search/opinion>



SOC/664
Adequate minimum wages directive

OPINION

European Economic and Social Committee

Proposal for a directive of the European Parliament and of the Council on adequate minimum wages in the European Union

[COM(2020) 682 final – 2020/310-COD]

Rapporteurs: **Milena ANGELOVA and Cinzia DEL RIO**

Referral	European Parliament, 11/11/2020 Council, 10/11/2020
Legal basis	Articles 153(2) and 304 of the Treaty on the Functioning of the European Union
Section responsible	Employment, Social Affairs and Citizenship
Adopted in section	11/03/2021
Adopted at plenary	25/03/2021
Plenary session No	559
Outcome of vote (for/against/abstentions)	158/97/20

1. Conclusions and recommendations

- 1.1 The European Economic and Social Committee (EESC) strongly supports the underlined goal for Europe to lead the way from fragility towards a new vitality by creating opportunities and prosperity by promoting innovation, sustainable growth and fair competition¹, in order to stimulate upward economic and social convergence. The EESC agrees with the overall objectives of achieving adequate minimum wages and strengthening collective bargaining systems across the EU, making work pay, fighting poverty, and strengthening the role of social partners and social dialogue, in line with national industrial relations systems.
- 1.2 The EESC notes that the proposed directive will contribute to the objectives of the Union – namely to promote the well-being of people, to develop a highly competitive social market economy (Article 3 TEU) and to promote improved living and working conditions (Article 151 TFEU). It also deals with the rights enshrined in the EU's Charter of Fundamental Rights, such as the right of workers to fair and just working conditions (Article 31), and is in line with Principle 6 of the European Pillar of Social Rights (EPSR). The European Commission points out that it does not contain any measures with a direct impact on the level of pay, and thus that the provisions set out in Article 153(5) TFEU are fully respected.
- 1.3 The EESC agrees with the overall objectives of the proposal and expects that it is carefully designed to respect national traditions, laws and practices, and that it leaves discretion for adaptation to the domestic context in its obligations. There are divergent views within the EESC regarding some elements of the legal base of the proposal. Despite these differences in views, the EESC expresses its opinion on certain issues included in the EC proposal.
- 1.4 The role of the State to create the "enabling conditions" – both political and legal – by supporting and respecting the role of social dialogue and collective bargaining for trade unions and employers' organisations - is recognised by several international institutions and also recalled in several opinions of the EESC. The social partners should be autonomous and employers' organisations and trade unions should be protected from any form of restriction of their right to organise, represent or take collective action. At the same time, the EESC reiterates again the importance of joint actions and capacity-building programmes at European and national level managed directly by the European and national social partners.
- 1.5 The EESC supports the objective of increasing collective bargaining coverage, according to national laws and practices and in full respect of and compliance with the division of competences and autonomy of social partners. The EESC agrees with the proposed target of 70% and believes that national action plans (Article 4) could play a crucial role in upward wage convergence and in establishing the most appropriate measures and mechanisms for wage setting and increasing coverage at national level, also in order to close the gender and age pay gap and reduce inequalities and discrimination, with particular attention to young workers. The

¹ [State of the Union Address by President von der Leyen at the European Parliament Plenary.](#)

EESC recommends that any national action plan shall be designed by social partners and agreed in a tripartite process.

- 1.6 The EESC recognises that in countries where a self-regulatory collective bargaining system exists, which ensures fair and adequate wage floors, together with other agreed working conditions, any intervention of the State should be avoided in order to safeguard/preserve a well-functioning industrial relations system, which is able by itself to guarantee the achievement of the objectives set in the proposed directive.
- 1.7 The EESC believes that the representativeness of social partners is an important factor, as it guarantees their democratic mandate. Different criteria exist which could represent good practice to be considered in designing action plans according to national laws and practices. There is a number of complex factors/criteria that could be taken into account when assessing the representativeness of social partners at national level, bearing in mind that they vary across the MS.
- 1.8 The EESC supports well-developed wage-setting systems and well-functioning social protection systems that provide safety nets for those in need, as well as other measures to prevent in-work poverty. The EESC notes that the proposed directive only lays down the general principle of adequacy of wages – based on non-binding reference values estimated for median or average gross or net wages – and does not include any specific measures or provisions on how wages should be set at the national level, as this remains solely an MS competence. The EESC supports setting binding indicators to guide MS and social partners in their assessment of the adequacy of statutory minimum wages and in identifying and introducing relevant measures in the national action plans.
- 1.9 The EESC notes that Article 9 of the directive includes provisions for workers employed in public procurement and sub-contracting, by inviting MS to comply with minimum wages in all public procurement projects. The EESC reiterates its call for public procurement contracts to fully respect collective agreements and for trade agreements to be suspended in the event of non-compliance with ILO fundamental and up-to-date Conventions.
- 1.10 The EESC recommends that the reports submitted by MS are examined and assessed with a proper involvement of social partners in EMCO and a specific subgroup could be created for this purpose – consisting of representatives of national governments, national and European trade unions and employers' organisations and experts appointed by the EC.

2. **General remarks**

- 2.1 The EESC agrees with the overall objectives of achieving adequate minimum wages and strengthening collective bargaining systems across the European Union (EU), making work pay, fighting poverty, and strengthening the role of social partners and social dialogue, in line with national industrial relations systems. A well-adapted minimum wage level contributes to stimulating domestic demand and economic growth and developing a highly competitive social market economy. There are several governance instruments through which the European Union (EU) and Member States (MS) work together to achieve these goals, including the European

Semester. The full, structured and effective involvement of the social partners and civil society organisations (CSO) in the whole Semester process at European and national level is crucial in order to implement economic and social policies.

- 2.2 The EESC notes that the proposed directive will contribute to the objectives of the Union – namely to promote the well-being of peoples, to develop a highly competitive social market economy (Article 3 TEU) and to promote improved living and working conditions (Article 151 TFEU). It also deals with the rights enshrined in the EU's Charter of Fundamental Rights, such as the right of workers to fair and just working conditions (Article 31), and is in line with Principle 6 of the European Pillar of Social Rights (EPSR). The European Commission points out that it does not contain any measures with a direct impact on the level of pay, and thus that the provisions set out in Article 153(5) TFEU are fully respected.
- 2.3 There are divergent concerns and views within the EESC regarding elements of the legal base of the proposal² but, despite these differences, in this opinion the EESC expresses its views on certain issues included in the EC proposal.
- 2.4 The EESC is concerned that the proportion of people who work but still face poverty increased from 8.3% of the total EU workforce in 2007 to 9.4% in 2018, with a significant impact on young people (28.1 % of the workers aged 16-24 % are at risk of poverty or social exclusion), women, people with a migration background, people with disabilities and those who are at the margins of the labour market. These groups are in more precarious and atypical jobs with low wages and lower social protection coverage, which will have an impact on the sustainability of welfare systems in the medium to long term. Targeted actions and reforms should be taken in order to make sure that marginalised groups are sufficiently protected from falling into poverty³.
- 2.5 The EESC recommends that actions are taken in order to prevent the risk of non-compliance, including an unwelcome growth in the number of undeclared workers, leading to unfair competition and that these aspects should be closely monitored and addressed in the implementation phase of the proposal.

3. Specific Remarks on the Proposal

3.1 *Avenues and Enabling Conditions for Promoting the Collective Bargaining on Wage-setting*

- 3.1.1 The proposed directive aims at ensuring that workers in the EU are protected by adequate minimum wages allowing for a decent living wherever they work and at promoting collective bargaining in wage-setting and in general on working conditions in all MS⁴. The EESC expects the proposal for a directive to be carefully designed to respect established national traditions in this field, and to leave discretion for adaptation to the domestic context in its obligations.

² [OJ C 429, 11.12.2020, p. 159–172.](#)

³ [Questions and answers: Adequate minimum wages.](#)

⁴ [Article 4 of COM \(2020\) 682 final, p. 23.](#)

- 3.1.2 The European social partners have several times called on the institutions to promote or create, where necessary, favourable and enabling conditions for social dialogue and collective bargaining to be effective and respond to the actual challenges. The Quadripartite statement⁵ "A new start for social dialogue" and the Council conclusions of 16 June 2016 call on MS to "support the improvement of the functioning and effectiveness of social dialogue at national level, which is conducive to collective bargaining and creates an appropriate space for social partners' negotiations".
- 3.1.3 The role of the state to create the "enabling conditions" – both political and legal – is recognised by several international institutions. "The EESC recognises that effective social dialogue must include: representative and legitimate social partners with the knowledge, technical capacity and timely access to relevant information to participate; the political will and commitment to engage in social dialogue; respect for the fundamental rights of autonomy for the social partners, freedom of association and collective bargaining, which remain at the core of industrial relations, and an enabling legal and institutional framework to support social dialogue processes with well-functioning institutions"⁶. Studies show that in those countries where the role of collective bargaining is well recognised and fully supported and respected by the state, unemployment rates are lower, productivity is higher and wage convergence is promoted⁷. It is also important that the outcomes of social dialogue processes deliver tangible outcomes for both workers and businesses.
- 3.1.4 Joint actions and capacity-building programmes at European and national level managed directly by the European and national social partners are an effective instrument to strengthen capacity in the area of social dialogue and collective bargaining for trade unions and employers' organisations where this is needed⁸. The EESC recommends that capacity-building programmes and actions are sufficiently supported and that their outcomes are assessed in order to best achieve their envisaged objectives.
- 3.1.5 The EESC recommends that some provisions and concepts in the proposal⁹ are more precisely formulated so as to leave no room for uncertainties and for interpretation by the CJEU. The subject matter and scope in Articles 1 and 2 apply to all MS, including countries where a self-regulatory collective bargaining system exists.
- 3.1.6 The EESC recommends that any national action plan aiming to enable the promotion of the collective bargaining coverage be designed by social partners and agreed in a tripartite process.

5 [Quadripartite statement](#).

6 [OJ C 10, 11.1.2021, p. 14–26](#), point 1.3. See [OECD Job Strategy](#); Eurofound Study "[Capacity building: towards effective social dialogue](#)", 2019; ILO Resolutions 2013 and 2018 concerning the [Recurrent Discussion on Social Dialogue](#).

7 [The role of collective bargaining systems for labour market performance](#).

8 European social partners have recently jointly stated that further work is to be undertaken in the area of capacity building. They have stated in their [Joint programme 2019-2021](#): "Capacity building activities remain a priority for the European social partners. They recognise that in order for the European social dialogue to have a positive impact, much needs to be done to strengthen and support social dialogue at all levels.". See also [OJ C 10, 11.1.2021, p. 14–26](#), points 3.23 and 3.24.

9 Especially regarding respect of the social partners' competences.

They should also be drawn up in full compliance with the well-recognised principles of freedom of association and voluntary nature of collective bargaining enshrined in the ILO conventions. The EESC appreciates the balanced approach set in Articles 1 and 3 of ILO Convention 131 on minimum wage fixing¹⁰. The EESC recommends that the provisions of the proposal for a directive respect the principles of ILO conventions 87, 98 and 154 in order to safeguard the social partners' autonomy, their possibilities to recruit members and the incentives and rights to negotiate and conclude collective agreements.

3.1.7 The EESC supports the objective of increasing collective bargaining coverage, according to national laws and practice and in full respect of – and compliance with – the division of competences and autonomy of social partners. In this regard, the EESC supports the promotion of the capacity of social partners and promotes their joint actions to engage in collective bargaining on wage-setting, and to encourage constructive, meaningful and informed negotiations on wages¹¹. Article 4 sets out requirements for government intervention in the preparation of frameworks and action plans and the EESC insists that this is done with a tripartite approach in a way that respects the social partners' autonomy and in cooperation with them. In some MS, the coverage of the collective agreements is decided by the social partners, while in other MS, the law or common practice provide for mechanisms to extend collective agreements and these differences shall be respected.

- The EESC agrees with the proposed target of 70% and believe that national action plans, agreed and designed with the social partners, could play a crucial role in upwards wage convergence and in establishing fair mechanisms for wage-setting at national level, including in order to close the gender and age pay gaps. They will also allow to take into account national practices and improve systems, where needed. Such action plans should be properly implemented, assessed, reviewed and adapted in order to gradually increase coverage of collective bargaining in the medium term. In some countries, extension mechanisms for collective agreements are in place and aim at increasing the collective bargaining coverage. However, using extension mechanisms is only one of the ways one can promote collective bargaining and increase coverage, in addition to joint actions and capacity-building, anti-union-busting measures, protecting the rights of trade union and employers' organisations to bargain collectively, setting agreed representativeness criteria and countering all forms of discrimination, for example. These elements and targeted proposals should be taken into account in the national action plans, together with other initiatives.

¹⁰ Ratified by ten MS which all have a statutory minimum wage system.

¹¹ [OECD "Job strategy 2018"](#), page 143 on "Achieving higher convergence".

3.1.8 However, in countries where a self-regulatory collective bargaining system exists, which ensures fair and adequate wage floors, together with other agreed working conditions, any intervention of the state should be avoided in order to safeguard/preserve a well-functioning industrial relations system, which is able by itself to guarantee the achievement of the objectives set in the proposed directive. In these countries, in the event of a collective bargaining coverage falling below a given threshold, national action plans have to come in the first instance from – and be agreed by – the social partners.

3.2 The proposal sets out a differentiating approach between the MS with statutory minimum wage-setting and those with collective agreement wage-setting. Such a classification, even if it is widely used by the OECD, Eurofound and other institutions for academic and research purposes, could be questioned when used for the purpose of any wage-setting-related exercise – for different reasons, one of which is that in some MS where the intervention of the government is limited to the officialisation of agreements negotiated by the social partners, the minimum wage is not statutory but conventional.

3.3 **Collective Bargaining – Definitions and Coverage**

3.3.1 The EESC stresses that collective bargaining is the most effective tool for setting adequate and well-adapted wages, including minimum wages, which are an essential component of the social market economy. Article 3 of the proposal includes some definitions that apply for the purpose of the directive.

3.3.2 The EESC believes that the representativeness of the social partners is an important factor, as it guarantees their democratic mandate. Different criteria exist which could represent good practice to be considered at national level according to national laws and practices. There are a number of complex factors/criteria that could be taken into account when assessing the representativeness of social partners at national level, bearing in mind that they vary across the MS: the number of members and the significance of the presence in the territory at national level; capacity to mobilise their members and take action; the number of collective agreements signed at the different levels (sector/company etc.); the number of elected trade union or employers' representatives; affiliation to a European social partners organisation (recognised by the EC); recognition by government and presence in national/sectoral bipartite/tripartite SD structures or bodies, etc. The EESC calls for the term "workers' organisations" to be replaced with "trade unions" as the former could lead to misleading interpretations and open negotiations up to other non-recognised forms of workers' interest groups or even "yellow" unions.

3.3.3 The EESC has several times stated that social dialogue is part and parcel of the European social model. The social partners should be autonomous and employers' and workers' organisations should be protected from any form of restriction of their right to organise, represent or take collective action. This is equally important for employers and for trade unions.

3.3.4 Article 7 of the directive sets out provisions on the involvement and consultation of social partners when it comes to determining and updating statutory minimum wages. In the last few years, in the context of the European Semester, several country-specific recommendations (CSRs) have been issued to call on MS to ensure adequate involvement of social partners in this

process. In the Semester 2020-2021, 12 Member States received CSRs pointing out the need to increase the social partners' involvement and ownership in decision-making processes¹².

4. Adequacy

- 4.1 As a result of the economic crises and the current pandemic, data show that there has been an overall stagnation of wages and in some countries even a deterioration in the last few years. The EESC underlines that collective bargaining plays a key role in providing adequate minimum wage protection. Countries with high collective bargaining coverage tend to have a lower proportion of low-wage earners, higher minimum wages compared with the median wage and lower wage inequality and higher wages than other countries¹³.
- 4.2 The EESC supports well-developed wage-setting systems and well-functioning social protection systems that provide safety nets for those in need, as well as other measures to prevent in-work poverty. The EESC notes that the proposed directive only lays down the general principle of adequacy of wages – based on non-binding reference values estimated for median or average gross or net wages – and does not include any specific measures or provision on how wages should be set at the national level, as this remains a competence of MS alone. The EESC supports setting binding indicators to guide MS and social partners in their assessment of the adequacy of statutory minimum wages and in identifying and introducing relevant measures in the national action plans. Wages are in fact set by national laws that provide for a statutory minimum wage, where they exist, or by collective bargaining. At the same time, lifting more people out of poverty will reduce public expenditure for social protection schemes. Poverty thresholds and social exclusion indicators are used at EU level for analyses and common data collection, but no agreed indicator currently exists at EU level to measure in absolute terms the fairness and adequacy of minimum wages, which the proposal leaves to MS to address in national plans.
- 4.3 Important elements, such as competitiveness, productivity, economic development by sector, skills' management, new production processes due to the introduction of new technology, digitalisation and different and more flexible work organisation in certain productive sectors should be considered by the social partners when setting wages through collective bargaining according to national law and practice. Underlining the need of upward wage convergence, the EESC points out that higher wages also mean an increase of consumption and hence of internal demand, with a positive economic impact, and rising wages also lead to higher revenues for social security and tax systems. These effects must be carefully analysed.
- 4.4 The proposed directive, however, aims at fixing an indicative threshold at EU level as a reference for statutory minimum wages in the countries where they exist. Bearing in mind that wages are payment for work done, other factors may also be considered, such as the poverty line, a minimum decent standard of living, each country's cost of living. These elements are the

¹² See [OJ C 10, 11.1.2021, p. 14–26](#) point 6.13 and the [overview of the 2020-2021 country-specific recommendations \(CSRs\) in the social field](#).

¹³ [AMECO Online](#).

key basic factors in setting statutory and collective agreed minimum wages in EU countries. A clear distinction between minimum wage-setting and wage increases should be made.

- 4.5 The criteria put forward concerning the adequacy of minimum wages are, with the exception of purchasing power, criteria concerning the distribution of wages and their evolution. They concern more generally inequality aspects and not the protection of the most vulnerable workers. "Minimum wages should be fair in relation to the wage distribution in the different countries and their level should also be adequate in real price terms, so that they allow for a decent standard of living whilst at the same time safeguarding the sustainability of those companies that provide quality jobs"¹⁴.

5. Public Procurement

- 5.1 Article 9 of the directive includes provisions for workers employed in public procurement and sub-contracting, by inviting MS to comply with minimum wages in all public procurement projects. In line with Directives 23, 24 and 25 of 2014, the provision obliges all contractors to comply with the applicable level of minimum wages, be they statutory or agreed in collective agreements. This provision is also in line with some decisions by the CJEU and in particular with the "Regiopost" ruling of 2015 (Case C-115/14)¹⁵. MS have the possibility to reject tender bids for public contracts from contractors who do not undertake to pay workers locally regulated or collectively agreed minimum rates of pay, as stated in Article 70 of Directive 2014/24/EU and Article 3 of the Posted Workers Directive¹⁶. The EESC has already called for public procurement contracts to fully respect collective agreements and for the suspension of trade agreements in the event of non-compliance with ILO fundamental and up-to-date Conventions. The EESC has also called for sanctions, including exclusion from public procurement and public funding, for enterprises that do not respect due diligence obligations in the proposed mandatory due diligence instrument¹⁷.

6. Monitoring and Data collection

- 6.1 There are already a significant number of databases and analyses regarding minimum wages and collective bargaining processes. Making trustworthy and updated data available to institutions and the social partners could help to better assess and understand actual trends, when it comes to taking decisions in this area. Therefore, the EESC calls on the EC to further assist MS, in cooperation with the social partners, to keep improving the collection of data and monitoring the evolution of statutory minimum wages¹⁸.

14 [OJ C 429, 11.12.2020, p. 159–172, point 1.5.](#)

15 [Case C-115/14.](#)

16 [Ref. to ILO Conv. 94 and OJ C 429, 11.12.2020, p. 197–209 and OJ C 429, 11.12.2020, p. 136–144.](#)

17 [OJ C 429, 11.12.2020, p. 197–209, point 6.4 and OJ C 429, 11.12.2020, p. 136–144, point 4.10.](#)

18 [OJ C 429, 11.12.2020, p. 159–172, point 6.4.1.](#)

- 6.2 In some MS, collective agreements are available and published and, in some cases, public internet websites allow free consultation of them, while in other MS collective agreements and the adequacy of wage levels are owned and examined by the social partners themselves and not by authorities or made publicly accessible. While being supportive of the delicate further development of the accessibility of data (which might be sensitive regarding the respect of the autonomy of the social partners and of collective bargaining and agreements, data protection, fair competition and other areas), the EESC is concerned about the possible increase in the administrative burden, especially for SMEs and for non-profit social economy enterprises, and calls for a balance to be struck between the added value stemming from the very detailed annual information obligation and the need to reduce such a burden as much as possible – when this provision is implemented at national level, in particular when it comes to the necessity to give information for covered and non-covered workers, disaggregated by gender, age, disability, company size and sector. Further clarity is also required on the need to give a distribution in deciles of minimum wages in countries with a conventional approach.
- 6.3 The EESC recommends that the reports submitted by MS are examined and assessed with the proper involvement of the social partners in EMCO and a specific subgroup could be created for this purpose – consisting of representatives of national governments, national and European trade union and employers' organisations and experts appointed by the EC.
- 6.4 The EESC notes the introduction, in the directive, of strong non-regression clauses and calls on the Parliament to further strengthen some key points in this area, in particular:
- No possible future interpretation of this directive should be used to undermine well-functioning minimum wages or collective agreement systems;
 - No provision in the directive should be used to the detriment of freedom of association or the autonomy of the social partners;
 - No statutory minimum wages will be introduced where they do not exist, except with the agreement of the social partners;
 - Wage-setting mechanisms are a national prerogative, and no decisions coming from the European Union institutions should be aimed at directly interfering with wage-setting mechanisms at national and company level, which remain a prerogative of the social partners.

The EESC also calls on the European Parliament to further underline that nothing in the directive shall be interpreted as restricting or adversely affecting rights and principles as recognised, in their respective fields of application, by Union law or international law and by international agreements to which the Union or the MS are party, including the European Social Charter and the relevant Conventions and Recommendations of the International Labour Organization.

The provision also provides for MS and social partners to introduce legislative/regulatory/administrative provisions or apply collective agreements that are more

favourable for workers. The EESC also stresses the need for ensuring compliance with applicable collective agreements and effective enforcement, which is essential to ensure access to minimum wage protection and to avoid unfair competition for businesses.

Brussels, 25 March 2021

Christa SCHWENG

The president of the European Economic and Social Committee

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N.B.: Appendix overleaf.

APPENDIX to the OPINION
of the
European Economic and Social Committee

The following counter-opinion, which received at least a quarter of the votes cast, was rejected in the course of the debate (Rule 43(2) of the Rules of Procedure):

1. Conclusions

- 1.1 The EESC has in its recent opinion SOC/632 Decent minimum wages across Europe, recognised that the legal situation regarding an EU initiative on minimum wages is highly complex. The EU can adopt legal instruments on working conditions on the basis of Articles 151 and 153(1)(b) TFEU. The Treaty provides that the provisions of Article 153 shall not apply to "pay". On the other hand, there is EU case law and existing directives that have treated the issue of pay as a key working condition. There are clearly divergent opinions on this matter and the EESC acknowledges that a balanced and cautious approach will have to be adopted by the Commission¹⁹, when a growing number of voices are calling upon the European Commission to use a Council Recommendation instead of a Directive²⁰.
- 1.2 The EESC has also stated that²¹ it is important that any EU action is based on accurate analysis and understanding of the situation and sensitivities in the Member States and fully respects the social partners' role and autonomy, as well as the different industrial relations models. It is also essential that any EU initiative safeguards the models in those Member States where the social partners do not consider statutory minimum wages to be necessary.
- 1.3 The EESC outlines below the reasons why the Commission proposal²² on adequate minimum wages in the European Union does not follow the balanced and cautious approach and why it cannot be seen as being based on accurate analysis and full respect of social partners' autonomy and the different industrial relations models as requested by the EESC.

2. General remarks

- 2.1 Wages, including minimum wages, are an important aspect of the European Union's social market economy model. Ensuring decent minimum wages in all the Member States would help in achieving a number of EU objectives including upward wage convergence, improving social and economic cohesion, eliminating the gender pay gap, improving living and working

¹⁹ [SOC/632](https://www.eesc.europa.eu/en/our-work/opinions-information-reports/opinions/decent-minimum-wages-across-europe), Decent minimum wages across Europe <https://www.eesc.europa.eu/en/our-work/opinions-information-reports/opinions/decent-minimum-wages-across-europe>, see point 6.1.2

²⁰ Nine MS have sent a letter to the German and Portuguese Presidency of the Council of the European Union about the need for legal analysis and referred to a Council Recommendation as a better legal instrument and that the implementation of the EPSR should respect the boundaries of the EU Treaties.

²¹ [SOC/632](https://www.eesc.europa.eu/en/our-work/opinions-information-reports/opinions/decent-minimum-wages-across-europe), point 1.11

²² Proposal for a DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL on adequate minimum wages in the European Union {SEC(2020) 362 final} - {SWD(2020) 245 final} - {SWD(2020) 246 final}

conditions in general and ensuring a level playing field in the Single Market. Wages represent payment for work done, and are one of the factors that ensure mutual benefits for companies and workers. They are linked to the economic situation in a country, region or sector. Changes may have an impact on employment, competitiveness and macro-economic demand²³.

- 2.2 The EESC recalls what its earlier work has indicated²⁴ in regard to the topic of minimum wages: Opinions within the EESC diverge. Some EESC members support the view that all workers in the EU should be protected by fair minimum wages which allow a decent standard of living wherever they work. Other EESC members are of the view that setting minimum wages is a matter for the national level, done in accordance with the specific features of respective national systems.
- 2.3 The EESC has previously stated²⁵ its belief that further efforts are needed regarding convergence of wages and establishing minimum wages in the Member States, whilst also stressing that the competence and autonomy of the national social partners regarding wage-setting processes must be fully respected in accordance with national practices²⁶. These efforts should also aim at strengthening collective bargaining, which would also contribute to fairer wages in general.
- 2.4 The EESC emphasises that the level of the minimum wage is a key economic policy tool, which must remain a matter for decision-making at the Member State level in order to take flexible account of their political, economic and social developments.
- 2.5 As the Commission has stated in its memorandum explaining the proposed measures, Member States with high collective bargaining coverage achieve better results than others in terms of higher wages and fewer low-paid workers. The EESC believes that the success of a such collective bargaining models can be explained by the fact that the state is involved in neither setting the criteria for collective bargaining agreements nor their enforcement, and that the social partners have full responsibility and autonomy for both.

COVID pandemic

- 2.6 Already in its opinion SOC/632, the EESC stated that the COVID-19 pandemic had hit Europe hard. The European Union and its Member States are still facing an economic recession of historic proportions with dramatic consequences for people and businesses²⁷. Since then, the situation has rather worsened than improved. Business investment is still low.

23 [SOC/632](https://www.eesc.europa.eu/en/our-work/opinions-information-reports/opinions/decent-minimum-wages-across-europe), Decent minimum wages across Europe <https://www.eesc.europa.eu/en/our-work/opinions-information-reports/opinions/decent-minimum-wages-across-europe>, see point 1.4

24 [SOC/632](#), point 1.2.

25 [SOC/632](#), point 1.3 and [OJ C 125, 21.4.2017, p. 10](#).

26 [SOC/632](#), point 1.3.

27 [SOC/632](#), point 1.1.

- 2.7 We have not yet seen the full employment impact of the COVID crisis but it is clear that the current crisis is expected to give rise to significant unemployment increases in the coming year. The COVID crisis has weakened the financial situation of many SMEs, which makes them more vulnerable to increased costs. The situation is similar across Europe.

Effects on employment

- 2.8 The EESC has already stated²⁸ that another source of concern is that a European statutory minimum wage policy could potentially have negative effects on employment²⁹, especially in the case of young people and low-skilled workers, and could aggravate non-compliance, which could also push a number of low-wage workers towards informality³⁰. Undeclared work leads to unfair competition and deteriorates the social and tax systems and disrespects workers' rights – including the rights to decent working conditions and a minimum wage. The EESC regrets the lack of complete assessment done by the European Commission of the impact of its proposal on employment and the economy as a whole. A directive on minimum wages is particularly damaging now, as our economies and societies are confronted with the unprecedented challenge of COVID-19.

3. **Comments on the actual Commission proposal**

3.1 Legal basis

- 3.1.1 According to the Commission proposal³¹, the proposed Directive is based on Article 153(1) (b) of Treaty on the Functioning of the European Union (TFEU).

- 3.1.2 The EESC notes that Article 153(5) of the TFEU expressly excludes "pay, the right of association, the right to strike or the right to impose lockouts" from the EU's legislative competence in the area of social policy. Thus, these matters are entirely a national competence.

- 3.1.3 There are divergent views within the EESC on whether any EU legal initiative under Article 153, especially a directive, would be legitimate³². The EESC has already stated³³ that among its key concerns are that the EU has no competence to act on "pay", including pay levels, and that such action could interfere with the social partners' autonomy and undermine collective bargaining systems, particularly in Member States where minimum wage floors are set through collective agreements. Furthermore, there are divergent views as to the added value of EU action, including within the Committee itself: while a majority of EESC constituents believe

28 [SOC/632](#), point 3.4.8.

29 Based on Graph A12.9, page 197 of the [Commission's impact assessment](#).

30 [Eurofound \(2019\) Upward convergence in employment and socioeconomic factors](#)

31 Proposal for a DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL on adequate minimum wages in the European Union {SEC(2020) 362 final} - {SWD(2020) 245 final} - {SWD(2020) 246 final}.

32 [SOC/632](#), point 1.8.

33 [SOC/632](#), point 1.9.

that such action could provide an added value, others disagree. Under all circumstances, and given the fact that the setting of minimum wages is a national competence, the EU should exercise its legislative powers with caution in any legislative initiative so as to be in full compliance with the subsidiarity principle.

3.1.4 Furthermore, as regards the legal basis, other provisions of the proposal refer to collective rights, such as the promotion of collective agreements in various ways (Article 4). The EESC notes that the TFEU contains a special legal basis in Article 153(1)(f) which covers representation and collective defence of the interests of workers and employers, including co-determination, subject to paragraph 5. The EU has competence to legislate with this basis only by unanimous decision. The EESC is of the opinion that this article should have been used as regards provisions on promotion of collective bargaining.

3.1.5 Based on the above concerns, further strengthened by the fact that in many cases the language used in the title of the proposal, in the title of some articles and in their text and in the preamble is deviating from being consistent with the actual scope of proposal, the Commission should consider to publish a recommendation instead of a directive. This would provide much needed flexibility for Member States to achieve the objectives of the proposal, while respecting their wage formation systems and the autonomy of the social partners.

3.2 Subject matter and scope

3.2.1 Article 1 states that workers should have "access to minimum wage protection" either by law or collective agreement. According to Article 2 the directive would apply to workers who have an employment contract or employment relation as defined by law, collective agreement or practice in force.

3.2.2 No Member State and no worker is excluded from the scope of the directive. In countries which rely exclusively on collective bargaining – where not all workers are covered by minimum wages and hence are not guaranteed access to minimum wage protection – this means a significant and unacceptable legal uncertainty. The EESC fears that the directive could be interpreted, also as regards countries relying exclusively on collective bargaining, as to ensure rights for all workers, to be covered by minimum wage protection. This, in practice, despite the reassurances in Article 1(3), would directly interfere with the minimum wage coverage in the Member States and push these countries in the direction towards universal application of collective agreements. This would undermine – and in the longer term force them to change – their labour market models.

3.2.3 The EESC recommends that some provisions and concepts in the proposal³⁴ are more precisely formulated not to leave space for uncertainties and for interpretation by the CJEU. The subject matter and scope in Articles 1 and 2 apply to all Member States, including countries where a self-regulatory collective bargaining system exists. As stated above, in countries which rely exclusively on collective bargaining this leaves space for legal uncertainty. Further, some

³⁴ Especially regarding respect of the social partners' competences.

adjustments have to be included for some specific cases which should fall out of the scope of the proposal – e.g. seafarers – whose wage-setting is arranged in international conventions³⁵.

3.3 Definitions

3.3.1 Article 3 of the proposal makes no distinction between statutory minimum wages and minimum wages, or rather wage floors, stipulated in collective agreements.

3.3.2 While the EESC understands that in statutory minimum wage systems there is a need for criteria on adequacy, set at the national level with the involvement of social partners, the EESC questions treating the two types of minimum wages identically in the directive proposal. In the case of systems relying only on collective bargaining, regulating adequacy of minimum wages infringes the autonomy of social partners.

3.3.3 The EESC recalls that minimum wages in collective agreement-based models are determined in negotiations between employers and employees which cover wages and working conditions also more generally. This means, for example, that in these situations "adequacy" is inherently balanced against other interests and other parts of the collective agreement, whereas statutory minimum wages are exogenous.

3.4 Promotion of collective bargaining on wage setting

3.4.1 Article 4 requires Member States to take measures to strengthen the capacity of the social partners to engage in collective bargaining on wage setting at sector or cross-industry level. A threshold of 70 per cent for collective bargaining coverage is proposed.

3.4.2 The EESC has stressed in its earlier opinion³⁶ that well-functioning collective bargaining systems, particularly sectoral collective bargaining, play a crucial role in providing for fair and adequate wages across the whole wage structure, including statutory minimum wages, where they exist.

3.4.3 The EESC underlines that it must be ensured that it is up to each Member State to decide, under national conditions, in accordance with their respective industrial relations system, firstly, what is the appropriate coverage objective and secondly, what measures should be taken nationally in the event the level falls below the nationally defined objective.

3.4.4 The EESC also fears that the proposed binding target (of 70% coverage) would weaken social partners in the long-term since in some countries, one way to achieve such a target would be to introduce a system of automatically extending collective agreements to all companies and workers, thereby reducing the role of social partners and weakening collective bargaining.

³⁵ The ILO Maritime Labour Convention (ILO, MLC, 2006).

³⁶ [SOC/632](#) point 3.3.10

3.5 Adequacy

3.5.1 Article 5(2) refers to national criteria for Member States to use when setting statutory minimum wages. These criteria include for instance purchasing power, growth rate of gross wages and labour productivity developments. Recital 21 states that indicators "such as 60% of the gross median wage and 50% of the gross average wage, can help guide the assessment of minimum wage adequacy in relation to the gross level of wages". However, those indicators concern more generally inequality aspects and not the protection of the more vulnerable workers

3.5.2 The EESC is concerned that – despite reassurances from the Commission in the explanatory memorandum to the contrary – the proposal is intended to have an impact on the level of the minimum wage and as a consequence the level of pay. Moreover, statements in the explanatory memorandum, clarifies that the Directive should allow for a decent living, reduce in-work poverty and create a more level playing field. The EESC considers these provisions as addressing the level of minimum wages, which exacerbates its concerns about the validity of the legal basis and choice of legal instrument.

3.6 The EESC notes that the proposal goes further than the provisions in the Procurement Directive 2014/24/EU, Article 18(2). This states that Member States shall ensure that economic operators comply with the applicable labour law obligations set out in, inter alia, collective agreements. In the proposal to Article 9 of the proposal, the word "applicable" is not included. This gives a perception of Article 9 that wages agreed in collective agreements should always be required in public procurement. This raises the question, whether the Commission's intention is to go beyond Directive 2014/24/EU by always demanding a salary according to a collective agreement in all procurement.

3.7 Monitoring and data collection

3.7.1 Article 10 requires Member States to report, among other things, data on collective bargaining coverage and level of minimum wages. Member States must also ensure that collective agreements are transparent and publicly available both with respect to wages and other provisions. The minimum wages will then be assessed by the Commission and the Council's Employment Committee, EMCO.

3.7.2 In the labour market models based exclusively on collective bargaining, the adequacy of wages is not examined by the state or a government agency. These agreements are owned and interpreted solely by the social partners. It would be unacceptable to make wage levels in collective agreements subject to review. It is also questionable with reference to the autonomy of the social partners to oblige them to make agreements accessible and transparent in a general way, particularly since the agreements solely can be interpreted and reviewed by the social partners. EESC also recalls that collective agreements do not always contain minimum levels for wages or wage floors. Furthermore, the reporting obligations are very labour intensive and in some parts the data requirements are not feasible.

Outcome of the vote:

In favour: 106
Against: 147
Abstention: 17
