

## AMENDMENT 1

559th PLENARY SESSION  
24-25 March 2021

<b>DOSSIER:</b>	<b>SOC/664</b> <b>Adequate minimum wages</b> <b>directive</b>
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**Replace the whole opinion presented by the SOC section with the following text** (explanation/reason at the end of the document):

### 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 Commission<sup>1</sup>,

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<sup>1</sup> [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

when a growing number of voices are calling upon the European Commission to use a Council Recommendation instead of a Directive<sup>2</sup>.

- 1.2 The EESC has also stated that<sup>3</sup> 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 proposal<sup>4</sup> 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 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 demand<sup>5</sup>.
- 2.2 The EESC recalls what its earlier work has indicated<sup>6</sup> 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 stated<sup>7</sup> 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 practices<sup>8</sup>. These efforts should also aim at strengthening collective bargaining, which would also contribute to fairer wages in general.

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2 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.

3 [SOC/632](#), point 1.11

4 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}

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

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

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

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

- 2.4 The EESC emphasizes 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 businesses<sup>9</sup>. Since then, the situation has rather worsened than improved. Business investment is still low.
- 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 stated<sup>10</sup> that another source of concern is that a European statutory minimum wage policy could potentially have negative effects on employment<sup>11</sup>, 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 informality<sup>12</sup>. 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

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<sup>9</sup> [SOC/632](#), point 1.1.

<sup>10</sup> [SOC/632](#), point 3.4.8.

<sup>11</sup> Based on Graph A12.9, page 197 of the [Commission's impact assessment](#).

<sup>12</sup> [Eurofound \(2019\) Upward convergence in employment and socioeconomic factors](#)

### 3.1 Legal basis

3.1.1 According to the Commission proposal<sup>13</sup>, 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 legitimate<sup>14</sup>. The EESC has already stated<sup>15</sup> 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 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

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<sup>13</sup> 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}.

<sup>14</sup> [SOC/632](#), point 1.8.

<sup>15</sup> [SOC/632](#), point 1.9.

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 proposal<sup>16</sup> are more precisely formulated not to leave space for uncertainties and for interpretation by the CJEU. The subject matter and scope in articles 1-2 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 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 conventions<sup>17</sup>.

### 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.

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<sup>16</sup> Especially regarding respect of the social partners' competences.

<sup>17</sup> The ILO Maritime Labour Convention (ILO, MLC, 2006).

3.4.2 The EESC has stressed in its earlier opinion<sup>18</sup> 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.

### 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

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18 [SOC/632](#) point 3.3.10

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.

### **Reason**

This text comprises an amendment which aims to set out a generally divergent view to an opinion presented by the section and is therefore to be described as a counter-opinion.

This counter opinion sets out the reasons why the Commission proposal 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.

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