**Legal opinion on the admissibility of an EU legal framework for statutory minimum wages as foreseen in the Commission’s proposal for a Directive on adequate minimum wages (Executive Summary)**

**Subject and purpose of the study:** On 28 October 2020, the EU Commission proposed a ‘Directive on adequate minimum wages in the EU’[[1]](#footnote-1) (Minimum Wages Directive) which shall establish criteria for the setting of statutory minimum wages in the Member States.

 To this end, the Minimum Wages Directive shall create a European legal framework for adequate minimum wages without prejudice to the possibility for Member States to set the statutory minimum wage in their jurisdictions. The proposed Directive also aims at promoting collective bargaining. Hence, Member States in which less than 70 percent of employees are covered by collective agreements shall adopt action plans to promote collective bargaining coverage. Member States with statutory minimum wages shall apply “clear and stable criteria to guide the setting and updating of minimum wages”.

 The Commission holds the opinion that Article 153 I b) TFEU is the appropriate legal basis for the Minimum Wages Directive because it allows the EU to support and supplement Member States’ policies in the field of working conditions. Referring to Article 153 V TFEU, which explicitly excludes direct wage setting from the EU’s competences, critics have claimed that the Minimum Wages Directive was incompatible with the Treaties. Therefore, we hereby assess whether or not the Commission’s proposal respects the EU’s competences as laid down in primary law.

**Discussion and assessment:** Article 153 V TFEU prohibits direct wage setting by the EU. However, this only applies to provisions which *immediately* set wages, but not to those with indirect effect on salaries. Hence, legislation which shapes individual wage components falls under the competency of the EU.

 Indeed, Articles 145 to 150 TFEU provide for a coordinated employment strategy set out by the EU. Of course, this does not justify the harmonisation of legal provisions in the Member States – but harmonising is not what the Commission intends to do: The Minimum Wages Directive aims to create a framework which brings minimum wages to an adequate and decent level, as measured by the respective median and average wages in the Member States. The effect of the Directive is thus indirect because only one wage component (the minimum floor) is concerned.

 There are plenty of examples for EU legislation indirectly affecting national wage setting: European regulations on maternity leave, paid leave, and the posting of workers also have indirect effects on wage setting in the Member States. The European Court of Justice has repeatedly confirmed the legitimacy of these measures: For the EU to be able to make use of its competency to harmonise in the field of social and labour market policy, the exception set forth in Article 153 V TFEU must be interpreted narrowly. This means that the exception of direct wage setting must not prejudice the effectiveness of other measures which, i.e., aim at preventing discrimination on the labour market or in-work-poverty.

**Conclusion:** Regarding the EU’s competences as laid down in primary law, there are no objections to the Minimum Wages Directive on the basis of Article 153 I b) TFEU. The Directive prevents social exclusion and discrimination of precarious workers, promotes and protects decent wages, and fosters equal pay for women and men (Article 157 I TFEU). Finally, it levels the playing field in terms of wages on the Single Market.

1. SEC (2020)362 final. [↑](#footnote-ref-1)