
Under Article 6 of the Protocol (No 2) on the application of the principles of subsidiarity and proportionality, national parliaments may, within eight weeks of the date of transmission of a draft legislative act, send the Presidents of the European Parliament, the Council and the Commission a reasoned opinion stating why they consider that the draft in question does not comply with the principle of subsidiarity.

The Danish Parliament has sent the attached reasoned opinion on the aforementioned proposal for a directive.

Under Parliament’s Rules of Procedure the Committee on Legal Affairs is responsible for matters relating to compliance with the subsidiarity principle.
Reasoned opinion on the Commission proposal for a directive on adequate minimum wages in the EU (COM(2020)0682)

The Danish Parliament has considered 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 complies with the principle of subsidiarity.

A majority in the Danish Parliament (the Social Democratic Party, the Liberal Party, the Danish People’s Party, the Socialist People’s Party, the Red-Green Alliance, the Conservative People’s Party and the New Right) takes the view that the proposed measures fail to comply with the principle of subsidiarity. Wages are best regulated at national level and by taking into account traditional national practices. Furthermore, the proposal on wages goes beyond the EU’s remit, which means that ascertaining whether wages at national level are adequate is not really a matter to which the EU can make an effective contribution. The objectives of the directive are therefore best achieved if wages are set at national level.

The majority in the Danish Parliament does not oppose the directive’s aims of creating fair competition and contributing to closer convergence on better wage and employment conditions. However, these aims should be achieved by other means, such as capacity-building among the parties concerned via the cohesion policy, employment strategy, etc.

The majority in the Danish Parliament considers it important that the freedom of the parties concerned to conclude negotiated wage agreements is fully respected, and that decisions are taken as closely as possible to the public and the parties involved. In Denmark, the social partners are considered to be best placed to take decisions concerning wage developments.

The objectives set out in Title X of the Treaty on the Functioning of the European Union (TFEU) on social policy are worded in a way that emphasises both the contractual freedom and the role of the social partners: according to Article 151 TFEU, ‘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 complies with the subsidiarity principle should therefore also be seen in the light of a second issue, i.e. whether the proposal fully respects the social partners’ contractual freedom.

On this basis, the majority rejects the Commission’s assessment that the subsidiarity principle is upheld with regard to respecting contractual freedom.

The majority points out that the parts of the proposal pertaining to the promotion of collective bargaining where it covers less than 70% of the workforce (Article 4(2) of the proposal) and enforcement (Articles 11 and 12) are not consistent with the subsidiarity principle.
As the Commission itself states in its explanatory memorandum on the proposal, 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 can be attributed to the fact that the state plays no role whatsoever in setting the criteria for collective agreements, and nor is it involved in their enforcement: the social partners have full responsibility for both.

Article 4(2), read in conjunction with Recital 19, implies that frameworks to promote collective bargaining are to be established by law or by tripartite agreement. This appears to be contradicted in Article 13 of the proposal, however, which provides that Member States may entrust the social partners with the implementation of the directive.

Pursuant to Article 11(1) of the proposal, Member States are to 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. Furthermore, pursuant to Article 11(2), Member States are to 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 workers in a Member State that has no statutory minimum wage are entitled to receive a minimum wage established as part of a collective agreement, even if said workers are not protected by the collective bargaining agreement because they are 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 partners are responsible for enforcement. It is not sufficient that it is established, in Article 11(1), that the provision is without prejudice to enforcement mechanisms in collective bargaining agreements, in that it the provision could be interpreted as granting access to courts of law on a par with the dispute resolution mechanisms in collective bargaining agreements.

The provision regarding penalties in Article 12 could also lead to the imposition of penalties in situations that could otherwise be resolved by means of mediation and conciliation.

All in all, the majority in the Danish Parliament finds that the proposal does not comply with the subsidiarity principle.

Yours sincerely,

Eva Kjer Hansen
Chair of the Danish Parliament’s European Affairs Committee